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# LIVES

OF

# THE LORD CHANCELLORS

AND

# KEEPERS OF THE GREAT SEAL

OF ENGLAND.

VOL. IV.

London:
Printed by A. Spottiswoode,
New-Street-Square.

THE

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# THE LORD CHANCELLORS

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OF

# ENGLAND,

FROM THE EARLIEST TIMES TILL THE REIGN OF KING GEORGE IV.

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BY

JOHN LORD CAMPBELL, A.M. F.R.S.E.

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[SECOND SERIES,
FROM THE REVOLUTION OF 1688, TO THE DEATH OF LORD CHANCELLOR THURLOW, IN 1806.]

VOL. IV.

LONDON:
JOHN MURRAY, ALBEMARLE STREET.
1846.

# PREFACE

TO THE

SECOND SERIES OF THE LIVES OF THE CHANCELLORS.

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I NOW lay before the Public the second part of my Biographical Work, extending from the Revolution of 1688 till the death of Lord Thurlow in 1806, and containing the Lives of two Lords Commissioners of the Great Seal, of one Lord Keeper, and of twelve Lord Chancellors. My anxiety upon this occasion is greatly increased by the very favourable reception experienced by me on my first appearance as an author. I am somewhat disheartened by the consideration that the Chancellors of the 18th century are much less important characters than à Becket, Wolsey, More, Bacon, Clarendon, Shaftesbury, and Jeffreys: but I am encouraged by reflecting that the interest taken in men and in events increases as they come nearer to our own "business and bosoms;"—and I have to announce that whereas, formerly, I could only make use of materials accessible to all, I am now put into possession of an immense mass of original documents, throwing a new light upon the history of the country and the manners of successive generations. No language could express the deep sense I entertain of the confidence and kindness shown me by individuals of all parties in the state who were the masters of these treasures.

In the first place, I must return thanks, though very inadequately, to Lord Viscount Dungannon, for the communication of several letters of his ancestor, Lord Com-

missioner Trevor, and the "Minute of Consultation" between that extraordinary person and the Princess Anne of Denmark, respecting her succession to the throne.—I have been able to rectify several mistakes in the early career of Lord Somers, by inquiries which Heads of Houses have most patiently and obligingly carried on for me at Oxford, and to add fresh lustre to the name of this great patriot by a number of his letters relating to the Union with Scotland, from the muniments of the Earl of Leven and Melville, to whose ancestor they were addressed.—To the Earl Cowper I am indebted not only for a copy of the Diary of Lord Chancellor Cowper, which had been printed for private circulation, but for the inspection and free use of a Memorial written by him on the state of parties for the information of George I.,—of the Diary of the Countess Cowper, his second wife, Lady of the Bedchamber to the Princess Caroline, afterwards Queen of George II.,—and of a correspondence between him and his father and mother, and both his wives, extending over a period of above fifty years.—My Life of Lord Chancellor Harcourt is enriched by much valuable information, derived by me from the family of the present venerable Archbishop of York, who are sprung from him, and now bear his name. —With Lord Chancellor Macclesfield's own representative no papers are preserved to assist in clearing up the obscure parts of his career; but for his Life, and still more for that of his immediate successor, Lord Chancellor King, I have derived invaluable assistance from the MSS. of the Earl of Lovelace, containing many letters from John Locke, the philosopher, Sir Robert Walpole, and other distinguished men who flourished in the end of the 17th, and the first part of the 18th century.—The copious materials which existed for the Lives of Lord Chancellor Hardwicke and Lord Chancellor Charles Yorke have been improved by several interesting documents transmitted to me by their distinguished descendants.—I have been enabled to add many important particulars respecting the Lives of Lord Chancellor Northington,

and Lord Chancellor Camden, from the very interesting MS. Journal of Augustus-Henry Duke of Grafton, Minister to George III. and a large collection of their letters, most handsomely submitted to me, without restriction, by the present Duke of Grafton and Lord John Fitzroy, — and from several original letters, and a MS. Life of Lord Chancellor Camden, which I have received in a manner equally gratifying from his grandson, the present Marquis Camden. — I have been permitted to peruse some curious letters from and to Lord Chancellor Bathurst, but not to make full use of them, because, although they are highly honourable to him, it is thought they might give pain to the descendants of some of his colleagues and contemporaries. — For the last Life in this Series, however, I have a large supply of new materials from the family and friends of Lord Chancellor Thurlow, — consisting of anecdotes of him, and literary compositions by him, from the time when he first went to school till within a few days of his death.

With such helps it must be my fault if these volumes shall not be found a contribution of some value to English literature.

It will be seen that I have desisted from the practice of taking a retrospective view of "the State of the Law" at the end of each reign, — little now depending for such matters on the personal character of the Sovereign: — but I have continued most anxiously to mark all the important changes in the administration of justice, whether by legislative enactment or by forensic decision, — in the ambitious hope that my book may be studied as a history of our jurisprudence from the foundation of the monarchy to our own times.

I am sorry that, to complete my plan, a Supplemental Volume will be necessary for the Lives of Lord Loughborough, Lord Erskine, and Lord Eldon. In preparing this I have made some progress, and I hope, before the end of another year, to give it to the world, with an Index and

Tables of the whole work, and a postliminious dissertation on the office of Lord Chancellor at different eras, on the characters of those who have filled it, and on the manner in which its duties should now be distributed and performed for the good of the community.

Before I conclude, I must return my warmest thanks to those who have pointed out mistakes and omissions in my First Series, — most earnestly imploring a continuance of similar favours.

Hartrigge House, Roxburghshire,
Nov. 2. 1846.

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OF

# THE FOURTH VOLUME.

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# LIVES

OF THE

# LORD CHANCELLORS OF ENGLAND.

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## CHAPTER CIII.

LORDS COMMISSIONERS OF THE GREAT SEAL ON THE ACCESSION OF WILLIAM AND MARY, AND LIFE OF LORD COMMISSIONER MAYNARD, FROM HIS BIRTH TILL THE REVOLUTION OF 1688.



A. D. 1689.
Interregnum on the abdication of James II.
Judicial appointments under William and Mary.

THE interregnum, which began on the 10th of December, 1688, when James II. fled from London, having thrown the Great Seal into the Thames, ceased on the 13th of February, 1689, when the Prince and Princess of Orange, accepting the tender of the crown from the Lords and Commons, under the conditions specified in the "Declaration of Rights," were proclaimed King and Queen. Most of the high offices of state were immediately filled up; and nearly all the common law Judges being very properly removed on account of their corruption and insufficiency, the bench was replenished with a most excellent new set,—Holt being at their head, as Chief Justice of England. So far no difficulty was experienced in determining and executing what was right. But much doubt and hesitation arose respecting the disposition of the Great Seal.

A rumour was propagated which I think rests on no sufficient grounds, that it was seriously offered—with the title of Lord Chancellor—first to Lord Nottingham, and then to Lord Halifax; and that they both declined it.* The

* See 3 Kennet, 550. 3 Burnet, O. T. 4.

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perversion of law through the instrumentality of corrupt courts, having mainly brought about the Revolution, William and his ministers were anxious above all things to obtain credit for a satisfactory administration of justice, and it would require strong evidence to convince us that they proposed appointments to which the public could hardly have submitted under the exiled sovereign. Equity had now assumed a systematic form; the decisions of the Chancellor were reported and cited as authority, like those of the common law Judges; Guilford and Jeffreys, however venal where the crown was concerned, were regularly trained lawyers, and they were capable of deciding satisfactorily between subject and subject. It is impossible, therefore, that, to please Tories or Whigs, there could have been any real intention of placing as supreme Judge in the Court of Chancery any nobleman, however respectable, who had, from the day of his leaving the university, devoted the whole of his time to fashionable amusement or political intrigue. I believe, upon the accession of William, it was resolved as a permanent arrangement, instead of a single Judge presiding in the Chancery, to resort to the plan adopted during the Commonwealth, of having several Judges sitting there co-ordinately, — after the model of the common law Courts.*

Plan to have several permanent Judges sitting together in the Court of Chancery.

Recollecting the fantastical as well as arbitrary acts of which late Chancellors had occasionally been guilty, "single-seated justice"† was then in great disrepute; and very fallacious hopes were entertained, that the long-standing evils of the Court of Chancery might be cured by severing it from all connection with politics, and appointing to the bench there several deep lawyers who should have nothing to distract them from their judicial duties.‡

* On examining the Books of the Privy Council, I find the following order made so early as 18th February, 1688-89.

"Present,

"The King's most Excellent Majesty, &c.

"It is this day ordered by His Majesty in Council, that Mr. Aaron Pingrey, one of the Clerks of the Petty Bag in Chancery, do cause copies forthwith to be made of all commissions that were granted by Oliver the Protector for custody of the Great Seal, and send them to Sir Robert Atkyns for his perusal."

† The Benthamite term for a tribunal with a single Judge.

‡ It has been said that the reason for putting the Great Seal into commission

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Maynard, Keck, and Rawlinson, Lords Commissioners.

Accordingly, on the 4th of March, Sir John Maynard, *Anthony Keck, Esq.*, and *Mr. Sergeant Rawlinson,* were named Lords Commissioners of the Great Seal. On the following day they were sworn in before the King in Council at Whitehall, and the two last received the honour of knighthood. *

Reasons for writing the Life of Maynard only.

Keck and Rawlinson are wholly uninteresting characters, and there could be no amusement or instruction in recording the dates of their birth, of their going to the university, of their being called to the bar, and of their death, which would comprehend the whole of their known history, beyond their accidental appointment to their present office.† But the career of the first Lord Commissioner is very curious, were it for nothing else than that it lasted much longer than that of any other English lawyer or statesman, as he had been called to the bar and sat in the House of Commons in the year 1625, in the very beginning of the reign of Charles I., and he held a high office in the law, and was a member of the House of Commons, in the year 1690, in the second year of the reign of William and Mary. Having been engaged in the most important state trials during that period,—having been a representative of the people in every intermediate parliament, whether held by Kings or Protectors,—having assisted in passing the "Bill of Rights" as well as the "Petition of Right,"—having seen the government carried on by prerogative for many years, without popular assemblies,— the constitution first reformed and

was to multiply offices; but Keck and Rawlinson were men without political claims or influence.

* "At the Court at Whitehall, the 5th of March, 1688-89.

"Present,

"The King's most Excellent Majesty,

"The Right Honourable Sir John Maynard, Knight, having taken the oaths injoined to be taken by the late act of parliament instead of the oaths of allegiance and supremacy, was this day, by His Majesty's command, sworn one of the Lords Commissioners for the custody of the Great Seal of England. A similar entry follows with respect to each of the other two, with the addition of the words, 'and at the same time received the honour of knighthood from his Majesty.'" *Books of Privy Council.* See also Crown Off. Min. Book, fol. 131. 2 Vernon's Rep. 95.

† "Their name, their years, spelt by the unletter'd Muse,
The place of fame and elegy supply."

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then subverted by the Long Parliament, — the vicissitudes of the civil war,—the trial and execution of the King,—the establishment of military despotism,—the recall of the ancient dynasty,—two turbulent reigns, in which the voice of the law and the lessons of experience were despised,—he lived to see the Stuarts for ever banished from their native country, and the foundation laid of a constitutional monarchy which still flourishes, and has conferred upon Britons a greater degree of civil and religious freedom, and of public prosperity, than ever fell to the lot of any other nation.

His birth.

This remarkable man — reminding us of the patriarchal race, who could plant an acorn, and recline under the spreading boughs of the unwedgeable and gnarled oak which sprang from it, — was the eldest son of Alexander Maynard, Esq., a gentleman of good family in the county of Devon.* He was born at Tavistock in the year 1602. At the age of 16 he was entered of Exeter Hall, Oxford, where he took the degree of A.B. I do not find any account of his academical habits, but his eager and dogged love of application was innate, and must have early marked him for eminence. Being destined to the legal profession, he was removed to the Middle Temple, where luckily he found a set of hard reading men, including Noy, Selden, and Rolle. Now he acquired that taste for black-letter law which stuck by him through life, and made him prefer the "YEAR BOOKS" to *Shakspeare* or *Ben Jonson;* insomuch that when he grew rich and kept his coach, he never took an airing in it without having a volume of these Reports as a companion, and he solaced his old age by publishing an edition of them.† At the same time he was a diligent attender at "moots," and laboured to acquire the faculty of prompt speaking, according to his noted saying which he was fond of repeating to his dying day, that "the Law is ARS BABLATIVA."‡

His education at Oxford.

At the Middle Temple.

His passion for the "Year Books."

* I do not find any relationship stated between the Devonshire Maynards and the Essex family of the same name ennobled by Charles I. and represented by the present Viscount Maynard.

† Roger North thus describes Maynard's well known passion for the Year Books. "He had such a relish of the old Year Books that he carried one in his coach to divert his time in travel, and said he chose it before any comedy." Life of Guilford, i. 28.

‡ Life of Guilford, ii. 27.

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On account of his extraordinary proficiency, he was called to the bar before the usual curriculum of study at his inn of court had expired; and his countrymen in the West being proud of him, and pushing him on, he got into practice much more rapidly than he otherwise would have done, notwithstanding all his merits.* He likewise derived great advantage from the patronage of Noy, to whom he was recommended, by his industry and acuteness, and he had the reputation of being the chief favourite of the future inventor of ship-money. However, he was not by any means injured by "prepropera proxis." Every case intrusted to him he studied profoundly, and whatever leisure he enjoyed from the business of his clients, he devoted to his law books, that he might keep up and extend his stock of legal lore. Ever familiar with the ancient history as well as with the newest fashions of the law, he could, from his retentive memory, his copious common-place book, and his daily experience, readily tell all the decided cases on any question which might arise, from the reign of Edward I. till the day on which his opinion was asked, or on which he had to argue in Court. He naturally took to the Western Circuit, on which he soon got employment, and of which he was the decided leader above half a century.

Called to the bar.

His rapid professional progress.

In the first parliament of Charles I. he was returned to the House of Commons, and he made his maiden speech in opposing the supply which was demanded under the pretence of a Spanish war, said to be impending. When he had inveighed against the extravagance of the Court, he declared at the same time that "he was for carrying on an open maritime war with Spain, whereby the nation might acquire riches and glory."†

March 27. 1625. Returned to the House of Commons.

August 8. 1625. His maiden speech.

He spoke for the "Petition of Right," but it would not appear that he ever had much success as a debater in parliament, and his efforts there were afterwards chiefly confined

June, 1628.

* This laudable spirit to support "a worthy of Devon," has constantly subsisted down to recent times;—two instances of which I may mention, Sir Vicary Gibbs and Lord Gifford. Maynard's name first appears in the Reports as counsel in Cro. Car. 3 Charles I. A. D. 1628; but the law reporters of those days often report cases without mentioning the names of counsel.

† 2 Parl. Hist. 32.

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Adheres to country party, but afraid of offending.

to giving an opinion upon questions of law, or of constitutional learning, which incidentally arose. His grand object continued to be to support his ascendency at the bar, whatever faction or whatever form of government might prevail. He voted steadily with the country party in the early parliaments of this reign without making himself prominent, like Coke, Hollis, or Eliot, or sharing the glory with them of being sent to the Tower, or prosecuted in the Star Chamber.

During the long intermission of parliaments he comforted himself for the suppression of popular rights by counting his gains at the end of every term and circuit, and finding, on comparison, that there was no falling off from the corresponding portion of the preceding year.

"Short Parliament." "Long Parliament."

He was a member of the "Short Parliament," abruptly dissolved in the beginning of 1640, and voted for the inquiry into grievances before granting a supply. At the meeting of the "Long Parliament," he was returned for Totness, and still took the liberal side, but with moderation. Lord Clarendon gives the following candid testimony to his merits, and those of another holder of the Great Seal, with both of whom he then co-operated, but to both of whom he was afterwards violently opposed: — "John Maynard and Bulstrode Whitelocke were men of eminent parts and great learning out of their professions, and in their professions of signal reputation; and though they did afterwards bow their knees to Baal, and so swerved from their allegiance, it was with less rancour and malice than other men: they never led, but followed, and were rather carried away with the torrent than swam with the stream, and failed through these infirmities, which less than a general defection, and a prosperous rebellion, could not have discovered."* Maynard without, like Hyde, renouncing his profession, and without materially sacrificing his practice for his parliamentary duties, as many lawyers then did, contrived to have much influence with the country party, and considerable weight in the House of Commons. He was a member of the committee to inquire into ship-money, and other abuses, from which the principle measures against the

* Life of Clarendon, i. 59.

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Court originated. He acted as one of the managers of the House of Commons on the impeachment of Lord Strafford, and of Archbishop Laud, but he grudged the time which these "unpaying occupations" consumed, and he did not gain much distinction from them. Although he was abundantly zealous, he was wanting in general political information, as well as in courtesy to the accused.*

Manager on impeachment of Strafford and Laud.

Before the civil war broke out, I find only one speech of his given at any length; but on this he seems to have bestowed prodigious pains, and he must himself have reported and published it.† It was made in the committee of the House of Commons which sat at Guildhall, under the protection of the city train-bands, after Charles's mad attempt to arrest the five members in St. Stephen's Chapel, — and it thus begins: — "Mr. Chairman, the intermission of parliaments so long together hath been the only cause, I confidently believe, of all those evils and troubles that have happened upon this and the other his Majesty's kingdoms.

Jan. 1642. His speech after the King's attempt to arrest the five members.

* 3 St. Tr. 1456. Evelyn, in his graphic account of Lord Strafford's trial, enumerates among the managers, "Serjeant Maynard, the great lawyer, the same who prosecuted the Earle of Strafford forty years before, being now neere eighty yeares of age." Diary, 30th Nov. 1680. vol. i. 328.

The following is Sir Ralph Verney's note, taken in pencil, of Maynard's speech before the Lords against Strafford.

Sir Ralph Verney's notes of his speech against Strafford.

"At four yeares end hee gets the power of the star-chamber.

"At Yorke he says, *Some Justices are all for law, but you shall find the King's little finger heavier than the loines of the law.*

"At Dublin he says, *Ireland is a conquered nation, the King may use them as hee list, there charters all royal.*

"A peere for suinge for justice was threatened, and sayes, noe law nor lawiers should dispute his power, and an act of state should bind as much as an act of parliament.

"Lord Mountnorris judged to death, and Bennet executed by marshall law.

"Ninth article. A warrant to Bishop of Downe and others to imprison any that would not appeare.

"Imposition on the subjects, &c.

"Flax a woeman's comodity, engrossed by him.

"Hee levied warr against the King, &c.

"Hee sent serjants at armes and soldiers to execute his decrees.

"The Scots in Ireland by oath compelled to obey all the king's royall comands, and fines the refusers. Hee calls Scots *Rebells*, and threatenes to root out *roote and branch.*

"The parliament here broken, and advised the kinge that, having tried the affection of his people, hee was absolved from all rules.

"*Of* 28th *Article.* Reducing the kingdome by force." *Notes of Long Parlt.* 33.

† It came out in a pamphlet along with the speeches on the same occasion of Mr. Grimston and Mr. Glynn. "Printed by Francis Constable, 1642." 2 Parl. Hist. 1020.

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The perverse nature of man is froward and crooked, that it is always inclined and bent to do nothing but that which is evil: without restriction either by the powerful preaching of the word of God, wholesome and pious discipline in the exercise of religion, and good laws made for the strict observance and performance of the same, under the pain of severe punishment for not obeying thereof: I say, without restraint by such means, the corrupt nature of the flesh is not to be curbed; but will go on to the committing of all manner of wickedness, both against God, his king and country: and, Sir, the only means to preserve and enjoy the sincere and pure teaching of God's word, and pious discipline, by wholesome laws enacted and made for that purpose, is by a parliament, by that great and wise council, expert in all the sciences of good government, either of a church or commonwealth. A parliament, Sir, is the clearest looking-glass for a state perfectly to see itself in that ever was made; there is no disease, infirmity, or misery that it groans under the burden of, but in this glass it may be perspicuously perceived, and the original and prime causes that have produced the same: this glass is not only clear and bright to look in, but it is medicinal, and of that sovereign power and efficacy, that it can cure and remedy all the grievances of the spectators therein, of what personage, degree, or dignity soever they be, of whatever condition or quality soever the disease be, they are infected withal; of what profession or function soever, whether spiritual or temporal they are of, if they do but look herein." He then goes on at infinite length, with unbounded tediousness, and much mixture of metaphor, to prove how "this glass is a cure for pride, haughtiness of heart, and tyranny over the King's good people, and above all for the diseases of the clergy, viz. ease, idleness, plenty, covetousness, luxury, wantonness, and all manner of lasciviousness." * But this specimen is enough to show that our orator was now thoroughly imbued with puritanical notions, and dealt largely in puritanical cant.

Maynard a Presbyterian.

He zealously attached himself to the Presbyterian sect; he subscribed the "Solemn League and Covenant," and he sat

* 2 Parl. Hist. 1026.

as a lay member of the famous Assembly of Divines at Westminster which prepared the catechism and chief standards of doctrine still adhered to by the Presbyterian Church of Scotland. He was likewise about the same time appointed a Commissioner along with Bulstrode Whitelocke to meet the Lord Chancellor of Scotland and other Commissioners of that kingdom, to treat of the best mode of establishing Presbyterianism over the whole island of Great Britain. Whitelocke, in his "Memorials," gives us a very amusing specimen of those consultations: "One evening very late Maynard and I were sent for by the Lord General [Essex] to Essex House, and there was no excuse to be admitted, nor did we know before hand the occasion of our being sent for: when we came to Essex House we were brought to the Lord General, and with him were the Scots Commissioners, Mr. Hollis, Sir Philip Stapleton, Sir John Meyrick, and divers others of his special friends. After compliments. and that all were set down in council, the Lord General spake to us to this effect: 'Mr. Maynard and Mr. Whitelocke, I sent for you upon a special occasion to have your advice and counsel, and that in a matter of very great importance concerning both kingdoms, in which my Lords the Commissioners of Scotland are concerned for their state, and we for ours; and they as well as we knowing your abilities and integrity are very desirous of your counsel in this great business.'—*Maynard.* 'We are come to obey your Excellency's commands, and we shall be ready to give our faithful advice in what shall be required of us.' *L. Gen.* 'My Lord Chancellor of Scotland, and the rest of the Commissioners of that kingdom, desired that you two by name might be consulted with upon this occasion, and I shall desire my Lord Chancellor, who is a much better orator than I am, to acquaint you what the business is.'—*L. Chancellor.* 'Master Maynard and Master Whitelock ye ken vary weele that Lieutenant General Cromwell is no freend of oors, and since the advance of our army into England he hath used all under-hand and cunning means to take off from our honour and merit of this kingdom; an evil requital of all our hazards and services, but so it is, and we are nevertheless fully satisfied of the affection and gratitude of

Member of Assembly of Divines at Westminster.

Consultation with the Chancellor of Scotland and others about denouncing Cromwell as an "INCENDIARY."

Speech of the Lord Chancellor of Scotland.

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the gude people of this nation in general.' [After dilating at some length on Cromwell's enmity to Scotland and the presbyterian church, on the suspicion that he was no well-wisher to his Excellency, and on the necessity, for the benefit of the *twa* kingdoms, that some course should be taken for prevention of impending mischief, his Lordship proceeds] 'Ye ken vary weele the accord 'twixt the twa kingdoms, and the union by the Solemn League and Covenant, and if any be *an incendiary between the twa nations* how he is to be proceeded against: now the matter is wherein we desire your opinions, what you tak the meaning of this word *incendiary* to be, and whether Lieutenant General Cromwell be not sike an *incendiary* as is meant thereby, and whilke way wud be best to tak to proceed against him if he be proved to be sike an *incendiary*, and that will clepe his wings from soaring to the prejudice of our cause. Now you may ken that by our law in Scotland we clepe an *incendiary* whay kindleth coals of contention, and raiseth differences in the state to the public damage, and he is *tanquam publicus hostis patriæ;* whether your law be the same or not, you ken best who are mickle learned therein, and therefore with the faveure of his Excellency we desire your judgments in these points.'—*L. Gen.* 'My Lord Chancellor hath opened the business fully to you, and we all desire your opinions therein.'—*Maynard.* 'Your Excellency and my Lord Chancellor are pleased to require our advice in this great business, and we shall deal clearly and freely with your Lordships, which I think will be most acceptable to you, and will in conclusion be best for your service. The word *incendiary* is not much conversant in our law, nor often met with in our books, but more a term of the civil law or of state, and so to be considered in this case, and to be taken according to the expression wherein it is used in the ACCORD of the two kingdoms, and in the sense of the parliaments of both nations. That sense of it which my Lord Chancellor hath been pleased to mention, it doth bear *ex vi termini;* and surely he that kindles the coals of contention between our brethren of Scotland and us is an *incendiary*, and to be punished as it is agreed on by both kingdoms. But, my Lords, there must be proof made of such particulars of words or actions upon which there may be sufficient

ground for a parliament to declare their judgment that he who used such words or actions endeavoured thereby to raise differences, and to kindle the fire of contention among us, and so that he is an *incendiary*. Lieutenant General Cromwell is a person of great favour and interest with the House of Commons and with some of the House of Peers likewise, and therefore there must be proofs, and the more clear and evident against him to prevail with the parliament to adjudge him to be an *incendiary*. I confess, my Lords, I do not in my private knowledge assure myself of any such particulars, nor have we heard of any here; and I believe it will be more difficult than perhaps some of us may imagine to fasten this upon him. And if it be difficult and doubtful, it is not fit for such persons as my Lord General and the Commissioners of the kingdom of Scotland as yet to appear in it, but rather first to see what proofs may be had of particular passages which will amount to a clear proof, upon which judgment may be grounded that he is an *incendiary*. And when such proofs shall be ready to be produced, we may again wait upon your Excellency and the business will then be the more ripe for your Lordships' resolution; in the meantime, my humble opinion is that it may be deferred.'" * Hollis and some hot presbyterians present were for instantly denouncing Cromwell as an *incendiary*,—a step which might have changed the history of the country,—but Whitelock having joined in the wary advice of his brother barrister, he thus concludes his narrative: "The Scots Commissioners were not so forward to adventure upon it for the reasons given by Mr. Maynard and me until a farther inquiry were made of particulars for proof to make him an *incendiary*, the which at length was generally consented to, and about two o'clock in the morning, with thanks and compliments, Mr. Maynard and I were dismissed; and I had some cause to believe that at this debate some who were present were false brethren, and informed Cromwell of all that passed among us; and after that Cromwell, though he took no notice of any particular passages at that time, yet he seemed more kind to me and Mr. Maynard than he had been

* Whit. Mem. 116.

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formerly, and carried on his design more actively of making way for his own advancement." *

Maynard notwithstanding his presbyterianism was cautious enough to avoid quarrelling outright with the Independents, and he never was expelled the House of Commons.

Jan. 4. 1648. Opposes the resolution against further addresses to the King.

Always true to his party, with a considerable regard for his personal safety,—on one occasion he displayed spirit,—knowing that the Independents would not then proceed to extremities against him. Being a friend to monarchy, while he wished greatly to curtail the prerogatives of the crown, he opposed the resolution brought forward, when the King was a prisoner in the Isle of Wight, against holding any farther communication with him,—the tendency of which was the establishment of a republic. He urged "that by this resolution of making no more addresses to the King, they did, as far as in them lay, dissolve the parliament; and that from the time of that determination he knew not with what security, in point of law, they could meet together, or any join with them in their counsels; that it was of the essence of parliament that they should upon all occasions repair to the King, and that his Majesty's refusal at any time to receive their petitions, or to admit their addresses, had been always held the highest breach of their privilege, because it tended to their dissolution without dissolving them; and therefore if they should now, on their parts, determine that they would receive no more messages from him, nor make any more address to him, they did upon the matter declare that they were no longer a parliament, and then how could the people look upon them as such?† The resolution, however, was carried by a large majority, the presbyterians ever since Pride's Purge having had very little weight in the House.

Feb. 1. 1648. Maynard impeached for high treason, and committed to the Tower.

To intimidate Maynard from repeating any such effort, articles of impeachment were soon after framed against him, accusing him of high treason, and were sent up to the Lords. The pretext for this prosecution was a tumult which had taken place in the month of July preceding, when a band of apprentices had marched from the City of London to West-

* Whit. Mem. 117. † Clarendon, iii. 142. 3 Parl. Hist. 831.

minster, with a view to induce parliament to revoke certain ordinances respecting the city militia, which had been passed at the instance of Cromwell and the army. It was alleged that the defendant had incited and encouraged this insurrection, and that it amounted to high treason as a "levying of war against the parliament."* Maynard being brought to the bar of the House of Lords in custody of the lieutenant of the Tower, to plead to these articles, he positively refused to do so, saying, with unanswerable reason, "that he being a commoner of England, and a free born subject, ought to be tried as a commoner by bill or indictment in the inferior courts of justice."† He likewise refused to kneel when required so to do, observing sarcastically that "he did admire the justice of the *Council Table* (against which they had made such complaints), in regard of the arbitrary proceedings against him in what was called a *Parliament.*"

Denies jurisdiction of the Lords to try a Commoner for treason, and refuses to kneel.

The Lords imposed a fine of 500*l.* upon him for his contumacy, and committed him to prison during pleasure. However, upon a secret understanding that he was to be quiet for the future, the impeachment was dropped, and he was soon after restored to liberty.

Fined 500*l.*

Prosecution dropped.

He remained very quiet for several years, keeping aloof from politics ‡, till the Protectorate being established he thought, like Hale, Rolle, and other great lawyers, that it was the part of a good citizen to submit to the existing government, however much he might condemn the hypocrisy and ambition of the man who was at the head of it. He accordingly consented to take the degree of the coif under a writ in the name of OLIVER, and he actually became a "Protector's Serjeant," whereby he was placed at the head of the bar.§

A.D. 1653. Maynard "Protector's Serjeant."

* 3 Parl. Hist. 839. † Ib. 845.

‡ It has been recently said that Maynard strongly opposed the Ordinance for the trial of Charles I., and that he entered a protest against that proceeding; but there is no contemporary evidence of his having taken any part in the discussion. It is exceedingly improbable tht he should have done an act for which he never could have been forgiven, as it was the policy of his life "so to live with his enemies that he might be reconciled to them as friends," and he was accused of pleading "as if he had taken fees on both sides; one while magnifying the gallant deeds of the army, then *firking* them for their remonstrance." See *Chalmers's Biography*, "Maynard."

§ "In 1653, Oliver Protector, Maynard was by writ, dated February 1., called to the degree of Serjeant at Law, having before taken the engagement;

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March, 1657. He counsels Cromwell to accept the Crown.

When the Crown was offered to Oliver, Maynard, as a lover of monarchy, joined Whitelocke, Glyn, and St. John, in strongly advising him to accept it, urging, "that no new government could be settled legally but by a King; till then all they did was like building upon sand, and every man that had been concerned in the war and in the blood that was shed, above all the King's, was still obnoxious to punishment, and no warrants could be pleaded but what were founded on, or approved of, by a law passed by King, Lords, and Commons; and as no man's person was safe till that was done, so they said all the grants and sales that had been made were null and void, all men that had gathered or disposed of the public money were for ever accountable. So, on public grounds, monarchy was the form of government suitable to all our institutions, and to the genius of the people, and the title of King, with defined prerogatives, was more favourable to liberty than that of Protector, who was often driven to do arbitrary acts from the novelty of his dominion." * But he was answered by the fanatics, who said "this was a mistrusting of God and a trusting to the arm of flesh; they had gone out in the simplicity of their hearts to fight the Lord's battles, to whom they had made the appeal; he had heard them, and appeared for them, and now they could trust him no longer; they had pulled down monarchy with the monarch, and would they now build that up which they had destroyed? they had solemnly vowed to be true to the Commonwealth without a king or kingship, and under that vow, as under a banner, they had fought and conquered; would they go back to Egypt? if kings were invaders of God's right, and usurpers upon men's liberties, why must they have recourse to such a wicked engine?" † These arguments, fortified by private threats of

Objections to this proposal.

and, on May 1st, was by patent made the Protector's Serjeant, and pleaded in his and the then Commonwealth's behalf against several Royalists that were tried in the pretended high court of parliament, whereon several generous cavaliers and noble hearts received the dismal sentence of death." *Anthony Wood.*

* "Res dura et regni novitas me talia cogunt."

† 1 Burnet, 94. It is curious to consider what would have been the effect if he had accepted the offer, and after being proclaimed King he had lived long enough to assemble a parliament which had passed an act ratifying all that had been theretofore done, and pardoning all past offences. His Majesty, King Oliver, would probably have soon been assassinated or dethroned; but there is great difficulty in seeing how the regicides could have afterwards been brought to trial.

assassination, prevailed, and the name of OLIVER I. is not inscribed in the list of English sovereigns, although his statue is very properly to appear in the new Palace at Westminster, among our distinguished generals and statesmen.

Maynard continued to practise at the bar with his usual assiduity. Notwithstanding his dignity of "Protector's Serjeant," he did not long conduct the government prosecutions, and he sometimes was counsel for those who were illegally proceeded against by his Highness's Attorney General. He gave a written opinion in favour of Lilburne, which the defendant read to the jury, and which greatly contributed to his acquittal.* Afterwards when Cony had been imprisoned for refusing to pay a tax imposed without authority of parliament, Serjeant Maynard moved the Court of Upper Bench for a *habeas corpus* in his favour, and "demanded his liberty with great confidence, both upon the illegality of the commitment, and the illegality of the imposition, as being laid without any lawful authority." The Judges not being able to maintain or defend either, pretty plainly declared what their sentence would be, and thereupon the Protector's Attorney required a farther day to answer what had been urged. Before that day Maynard was committed to the Tower, for presuming to question or make doubt of his Highness's authority.† But I am sorry to say that Maynard again showed that he had no taste for being a martyr. When he and Serjeant Twisden and Mr. Wadham Wyndham, who had been imprisoned along with

Maynard counsel for Cony, prosecuted by Cromwell.

Maynard sent to the Tower.

* 5 St. Tr. 348. 443. The defendant had earnestly prayed for further time "in regard the counsel assigned him refused to appear for him, *only Serjeant Maynard who was sick.*" This sickness was suspected to have been brought on by a dread of the Tower.

† 5 St. Tr. 935. 3 Clarendon, Hist. Reb. 985. The noble historian adds: "The Judges were sent for, and severely reprehended for suffering that licence. When they with all humility mentioned the law and MAGNA CHARTA, Cromwell told them, with terms of contempt and derision, 'Their MAGNA F—— should not control his actions, which he knew were for the safety of the Commonwealth.' He asked them, 'who made them Judges? whether they had any authority to sit there but what he gave them? and if his authority were at an end, they knew well enough what would become of themselves;' and dismissed them with a caution that they should not suffer the lawyers to prate what it would not become them to hear." Notwithstanding this coarse and violent ebullition, it should be recollected that "in all matters which did not concern the life of his jurisdiction he seemed to have great concern for the law," and that pressing the Judges to act under him he said, "he would rather rule by *red gowns* than by *red coats.*"

Cromwell's administration of justice.

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His mean submission.

him for the same cause had lain three or four days in custody. "they unworthily petitioned to be set at liberty, acknowledging their fault, and promising to do so no more, choosing rather to sacrifice the cause of their client, whereon that of their country was eminently concerned, than to endure a little restraint with the loss of a few fees."*

Declines being made a Peer by Cromwell.

He was soon again on good terms with the Protector, and might have been one of his Peers, but he wisely would not accept any promotion which would take him from the practice of his profession; and while parliaments sat under Oliver, he continued a member of the House of Commons as representative for Newton, and afterwards for Beralstone. He is recorded as having entered a solemn protest against two evils which have continued to visit subsequent parliaments — "excessive legislation, and long speeches." "A parliament," said he, "hath passed more laws in one month, than the best student in England can read in a year, and well if he can understand them then. We had a speech to-day (Sir Arthur Haslerig's), which lasted from nine to twelve: if you go on at this rate to have one speech a day, the Dutch will give you 2000*l.* a day to do so."†

Swears allegiance to Richard.

On Oliver's demise, Maynard immediately swore allegiance to his successor, and had his patent renewed, as "Protector's Prime Serjeant." But in consequence of the proved incapacity of Richard, and the confusion which followed, the Presbyterians resolved to recall Charles II., trusting to the comprehension promised them privately by Hyde, and by the King's public declaration from Breda, and Maynard, as one of their leaders, took an active part in the measures devised for supporting Monk's movement to crush the Commonwealth. He was a member of the Council of State, in whom the executive government was for some time vested‡, and he took his seat once more as representative for Totness on the restoration of the Rump, and being returned for Beralstone to the "Convention Parliament," he was very useful in re-

Assists in recalling Charles II.

* 5 St. T. 936.

† *Burton's Diary.* Our only consolation is to read of an American legislator being "five days in possession of the floor."

‡ Martyn's Life of Shaftesbury, i. 231.

pressing the republican spirit, which still showed itself in considerable strength.*

Charles, on his arrival at Whitehall, very cordially received the Serjeant, now well stricken in years, and little expecting to live to sit in another "Convention Parliament," or to see the expulsion of the dynasty now so enthusiastically supported. He submitted to the ceremony of again taking the coif under a royal writ, which treated his former serjeantcy as a nullity; —and, to reward his loyalty, he was made a King's Serjeant, and received the honour of knighthood.† Sir John was likewise offered the situation of a puisne Judge, but he preferred his lucrative practice at the bar.

A. D. 1660. June 6. Made King's Serjeant, and knighted at the Restoration. Nov. 9.

Now comes the most discreditable part of his career. Along with Serjeant Glynne, who had acted as the Protector's Chief Justice, he appeared at Westminster among the Crown lawyers to sustain the prosecution of Sir Harry Vane for high treason, — the only overt act being that he (like the two serjeants), had acted under the authority of the Commonwealth: — an instance of tergiversation which even shocked the warmest royalists, and which is thus held up to scorn by Butler: —

A. D. 1661. Scandalously assists in prosecution of Sir Harry Vane.

> "Did not the learned Glynne and Maynard,
> To make good subjects traitors, strain hard?"‡

Maynard, however, strenuously resisted the measures introduced by Clarendon, by which faith was broken with the Presbyterians.

Defends the rights of the Presbyterians.

Though baffled in the unequal contest, he showed great moderation on the fall of their capital enemy, by contending that none of the offences charged against him amounted to high treason. "No man," said he, "can do what is just, but he must have what is true before him; where life is concerned you ought to have a moral certainty of the thing,

A. D. 1667. Defends Clarendon on charge of high treason.

* 4 Parl. Hist. i. 164.

† Dugd. Or. Jur. 115.

‡ Pepys's Diary likewise shows the public scandal excited by the two republican Serjeants become royalists. He thus concludes his account of the coronation: "Thus did the day end with joy every where, and, blessed be God, I have not heard of any mischance to any body through it all, but only to Serjeant Glynne, whose horse fell upon him yesterday, and is like to kill him, which people do please themselves to see how just God is to punish the rogue at such a time as this, being now one of the King's Serjeants, and rode in the cavalcade with MAYNARD, *to whom people wish the same fortune.*"

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and every one be able to say, *upon this proof, in my conscience, this man is guilty.* Common fame is no ground to accuse a man where matter of fact is not clear. To say an evil is done, therefore this man hath done it, is strange in morality, more strange in logic."*

His argument in Lord Shaftesbury's case for parliamentary privilege.

He was now counsel for the Crown in all government prosecutions †; but though he had precedence of the Attorney and Solicitor General, he did not take a prominent part in any case which occurred, till Lord Shaftesbury was brought up before the Court of King's Bench on a *habeas corpus*, having been committed to the Tower by the House of Lords for contending that the parliament was dissolved.‡ The question now arose for the first time, "whether a warrant of commitment by either House of Parliament must be framed with the same strictness as a warrant of commitment by an inferior tribunal," the warrant merely ordering the defendant to be "imprisoned during pleasure, for high contempts committed against this House." Objection was taken "that the cause of commitment returned was not sufficient, for the general allegation of high contempts is too uncertain, as the Court cannot judge of the contempt if it doth not appear in what act it consists." But Maynard argued that the House of Lords was a branch of the legislature and the Supreme Court of the realm, and that its resolutions on its own privileges could not be adjudicated upon by inferior tribunals, whose judgments it was entitled to review. He admitted, that "if the commitment had been by a magistrate, or by the Common Pleas, or Exchequer, it could not have been supported; but it was by a Court not under the control of the Court desired to quash it, and whether the contempts should be specified, was a matter within the deliberation of that Court, not of this; that when a question of privilege incidentally arises in a common law action, it may be determined by the common law Judges; but here the question was, whether the Lords had capacity to determine their own privileges, and whether this Court

* 4 Parl. Hist. 572. 577.

† See Rex *v.* Tonge and others for high treason, 6 St. Tr. 232. Lord Morley's Trial, ib. 776., Lord Mordant's Trial, ib. 796.

‡ Ante, Vol. III. p. 333

can reverse their decision, and discharge a Peer whom they have committed for contempt. The Judges had often demanded of the Lords how the law is, and how a statute should be expounded; and, *à fortiori*, this Court ought to demand their opinions when a doubt ariseth on an order made by the House of Lords, respecting their own privilege and one of their own members, instead of adjudicating this order to be erroneous."

Luckily for parliamentary privilege, the government wished to detain Shaftesbury in custody, or this unanswerable reasoning might not have prevailed; but the Judges unanimously adopted it, the prisoner was remanded to the Tower, and the precedent has hitherto been universally followed, where the question of the validity of the commitment by either House of Parliament has arisen on a *habeas corpus*, although an attempt has been made to throw a doubt upon the principle where the question arises in an action.*

His efforts in the House of Commons.

During the reign of Charles II. Maynard went on steadily devoting himself to his profession, and eschewing politics as much as he decently could, consistently with preserving his reputation as a leader of the Presbyterians; but he occasionally came forward in the House of Commons on great constitutional questions. His arguments in the dispute with the House of Lords respecting the jurisdiction of that House to hear appeals from Courts of Equity, although they proved nugatory, were so pleasing to the Commons that they were ordered *in perpetuam rei memoriam* to be entered in the Journals. In the discussions on the "Declaration of Indulgence," in 1673, he boldly denied the dispensing power.† Likewise, when the bill was proposed two years after for purity of Election, he strongly supported it, saying, "This bribing men by drink is a lay simony. *Electiones fiant libere.* What do men give hogs drink for? To be carried on the shoulders

* 6 St. Tr. 1269. S. C. 1 Freeman, 153. 1 Mod. 144. 3 Keble, 792. And see Murray's Case, 1 Wils. 299. Brass Crosby's Case, 19 St. Tr. 1137. Oliver's Case, 2 Sir W. Bl. 758. Flower's Case, 8 T. R. 314. Sir John Hobhouse's Case, 3 Barn. and Ald. 420. Case of Sheriffs of Middlesex, 11 Ad. and Ell. 275. Lord Campbell's Speeches, 240—251.

† 4 Parl. Hist. 377. Ib. 783.

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of drunken fellows." He was, nevertheless, for a high property qualification in the representatives. The franchise of the electors hardly seems to have been generally considered in England from the reign of Henry VI., when it was confined in counties to freeholders of 40 shillings, till the reign of George III., when the discussion originated which terminated in the Reform Bill.

Popish Plot.

Maynard took an active part in the prosecutions which arose out of the Popish plot, conducting some before a jury as counsel for the Crown, and others before the Lords as a manager for the House of Commons. He was particularly conspicuous on the trials of Coleman and of Lord Stafford, repeating on both occasions his favourite quotation; "Multi ob stultitiam non putabant, multi ob ignorantiam non videbant, multi ob pravitatem non credebant, et non credendo conjurationem adjuvabant."

A. D. 1678. His attempt to convict an infant Peer of murder.

In these cases he might be carried away by popular enthusiasm, but I must strongly reprobate a cold-blooded attempt he made (from no motive that I can discover, except the professional passion for getting the verdict) to convict of murder the minor peer, Lord Cornwallis, who had, by mere mischance, killed another school-boy. Although no evidence was given for the accused, no case being made out against him,— after the Solicitor General had replied for the Crown, the old Serjeant delivered a furious address to the Lord High Steward and the Peers-triers, calling on them to convict, and concluding with these words: "Thus stands the case before your Grace and my Lords; it is a case of blood, and it cries loud." But, to the honour of the peerage, the poor boy was acquitted, one or two Lords finding it manslaughter, and all the rest saying generally, *Not Guilty*.*

A. D. 1679, 1680. His perversion of the law of treason in Lord Danby's case.

I must likewise hold up to indignation the attempt which he made in Lord Danby's case to pervert the famous Statute of Treasons, 25 Edward III., by laying down that "it was only binding on the inferior Courts, while in a proceeding by way of parliamentary impeachment any thing may be declared treason;" for he must have been well aware that the power

* 7 St. Tr. 144—158.

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to declare new treasons was to be exercised only by prospective legislation, and that an impeachment for treason, as well as an indictment, could only properly be for an offence declared to be treason before it was committed. Swift, with his usual keenness, remarks on the Serjeant's casuistry in this case respecting the power of parliament to declare new treasons—"Yes, by a new act, but not by a retrospective one: Maynard was a knave and a fool, with all his law." *

Supports the Exclusion Bill.

When the "Exclusion Bill" was brought forward, he supported it on the ground that the hopes of a Popish successor encouraged the Popish plot. "Shall we be led," he exclaimed, "like an ox to the slaughter, or a fool to the stocks, and not apprehend our danger?" While the measure was pending, he slipped away to the circuit without leave of absence. This being discovered, his son was instructed to inform him that "if he did not return forthwith he should be sent for in custody, he being treated thus tenderly in respect of his having been long the Father of the House." †

March, 1681.

In the critical parliament at Oxford which followed, he was so far carried away by faction as to forget what he had said when he was himself imprisoned for high treason, and to abet Shaftesbury in the unconstitutional attempt to try Fitzharris, a commoner, on a similar impeachment for high treason, at the bar of the House of Peers; but no better reasoning could be adduced by him than the following:—"This damnable Popish plot is still on foot in England, and I am sure in Ireland too; and what arts and crafts have been used to hide this plot! It began with the murder of a magistrate; then with perjury and false subornation, and this of Fitzharris is a second part of that. We sent up an impeachment to the Lords against Fitzharris, and told the Lords that in due time we would bring up articles against him, and the Lords refuse to try him. In effect they make us no parliament. If we are the prosecutors, and they will not hear our accusation, their own lives as well as ours are concerned. This is a strange way of proceeding; the same

He contends in Fitzharris's case that a commoner may be tried by the Lords for high treason.

* 2 Burn. O. T. 58. 11 St. Tr. 599.

† Com. Journ. vol. viii.

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day we impeach Fitzharris, they vote we shall not prosecute him: now, when all is at stake, we must not prosecute. If this be so, Holland must submit, and let the French run over all. This is a strange breach of privilege of parliament, and tends to the danger of the King's person, and the destruction of the Protestant religion; and I hope you will vote it so."* It was so voted; but the public condemned the attempt to deprive an Englishman of his birth-right, the benefit of a trial by his own peers, and the king dissolved the parliament, with the general applause of the nation.†

March 28. 1681.

Now came out the Earl of Roscommon's "Ghost of the Old House of Commons to the New One appointed to meet at Oxford," in which the old Serjeant is handled very roughly by the nephew and godson of Strafford.‡

The Earl of Roscommon's verses on Maynard.

"The robe was summon'd, Maynard in the head,
In legal murder none so deeply read;
I brought him to the bar where once he stood
Stain'd with the (yet unexpiated) blood
Of the brave Strafford, when three kingdoms rung
With his accumulative hackney tongue;
Prisoners and witnesses were standing by,
These had been taught to swear, and those to die,
And to expect the arbitrary fates,
Some for ill faces, some for good estates.
To fright the people and alarm the town,
Bedloe and Oates employ'd the reverend gown;
But while the triple mitre bore the blame,
The King's three crowns were their rebellious aim."

A. D. 1681. He prosecutes Fitzharris as counsel for Crown before a Jury.

Maynard was immediately after subjected to a great mortification, in being required, as King's Ancient Serjeant, to prosecute before a Jury the very Fitzharris who the Commons had voted could not, without a gross breach of their privileges, be proceeded against according to the course of the common law; the impeachment in the name of the

* 4 Parl. Hist. 1335.

† Ante, Vol. III. Chap. XCIII. This subject is very ably treated in the Edinburgh Review, No. clxviii. p. 329. The learned and ingenious writer, taking the opposite side, in answer to precedents, authorities, and general arguments, relies almost exclusively on the *dictum* of Selden, which would have been entitled to much respect but for the reasoning by which it is supported. If, indeed, the Commons upon an impeachment were, as Selden supposes, "instead of a jury," a commoner might be tried before them for his life, but they are simply "accusers" as much as the Attorney General, and the Lords exclusively decide both upon the law and facts of the case. The Lords do *try* the delinquent as well as pass *judgment* upon him.—There is not a single instance in our records of a commoner being capitally convicted by the Lords, and surely the weight of authority is greatly against such a proceeding.

‡ See Johnson's "Life of Roscommon."

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Commons of England being to be considered as depending, notwithstanding a dissolution. After due deliberation, the old lawyer preferred the performance of his professional duty to the resignation of his professional dignity, and Fitzharris having pleaded the pendency of the impeachment in abatement of the indictment, Serjeant Maynard contended with Serjeant Jeffreys, his brother counsel, that the plea was so vicious, that it ought to be quashed without the Attorney General being even called upon to demur to it. The plea was quashed accordingly, and the prisoner was convicted and executed.*

A. D. 1684. His speech for Papillon.

It was said of Maynard that, "as a lawyer, all parties were willing to employ him, and he was equally willing to be employed by all." Accordingly, after the victory gained by the Court in the City of London, he was counsel for Papillon in the famous action brought against him as Sheriff by the late Lord Mayor for a false arrest, on the ground that Papillon and Dubois had not been duly elected Sheriffs, and that all acts done by them in executing process were unlawful. This I think is the Serjeant's most eloquent forensic effort; but it had no effect upon a packed jury, who found a verdict for the plaintiff with 10,000*l.* damages, and merited this compliment from Chief Justice Jeffreys, "Gentlemen, you seem to be persons that have sense about you, and consideration for the government. You have given a good verdict, and are greatly to be commended for it."†

Ancient Serjeant to James II.

Nevertheless, Maynard was always very courteous and respectful to the Judges, even amidst their worst atrocities, and he had been so careful not to give any mortal offence to the government, that on the demise of the crown he was re-appointed "Ancient Serjeant" by James II., and he was employed in this capacity to assist in the investigation respecting the birth of the Prince.‡

His lapse of memory when examined as witness for Titus Oates.

During this reign he was placed in a very awkward situation, being supœnaed as a witness by Titus Oates, when that miscreant was indicted for perjury. The Serjeant, who had so often supported his veracity, was examined to his cha-

* 8 St. Tr. 243—399. † 10 St. Tr. 372.
‡ 12 St. Tr. 125.

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racter and required to state on oath some particulars that had occurred on the trial of Lord Stafford.—*Serj. Maynard.* "I know nothing truly, nor can I remember any thing of it now."—*C. J. Jeffreys.* "He says he remembers nothing." —*Serj. Maynard.* "If Mr. Oates had told me before-hand, when he subpœnaed me, what time and what particular things he would have examined me to, probably, if I was there, I have notes that I then took; but I can never swear to my memory for any cause so long ago."—*Oates.* "My Lord, I am very sorry Mr. Serjeant Maynard's age should so impair his memory."—*C. J. Jeffreys.* "I dare say you are not more sorry for his age than he is."* We cannot help suspecting that this supposed lapse of memory from senility was affected, as five years later the same individual took an important part in the settlement of the kingdom, on the landing of the Prince of Orange, and was actually intrusted with the custody of the Great Seal.

Nov. 1685. In the parliament of James II. he resists the Bill to make words treason,

In the only parliament of James II., Maynard still represented Beralstone, and he now displayed more than his usual boldness. A bill was brought in to make words disparaging the King's person or government high treason, which it was supposed would have embraced any thing spoken against the King's religion. "This was chiefly opposed by Serjeant Maynard, who in a very grave speech laid open the inconvenience of making words treason; 'they were often ill heard, and ill understood, and were apt to be misrecited by a very small variation: men in a passion, or in drink, might say things they never intended; therefore, he hoped they would keep to the law of Edward III., by which an overt act was made the necessary proof of all intentions.' When others insisted that 'out of the abundance of the heart the mouth speaketh,' he brought the instance of our Saviour's words, 'Destroy this Temple, &c.,' and showed how near *the* Temple was to *this* Temple, *pronouncing it in Syriac*, so that the difference was almost imperceptible. 'There was nothing more innocent than these words as our Saviour meant and spoke them, but nothing more criminal

* 10 St. Tr. 1162.

than the setting on a multitude to destroy the Temple.' This made some impression at that time; but if the Duke of Monmouth's landing had not brought the session to an early conclusion, that, and every thing else, which the officious courtiers were projecting would have certainly passed."*

And the supply to keep up standing army.

After the suppression of Monmouth's rebellion, a supply was proposed to keep up a standing army, which was to be commanded by Roman Catholic officers. The Serjeant joined in stoutly opposing this plan of military government. After showing that, by the existing law, and the powers vested in Sheriffs and Lord Lieutenants, the internal tranquillity of the country was sufficiently provided for, and that we were at peace with all foreign nations, he observed, "If you give this supply, it is for an army; and then, may not this army be made of those that will not take the test? which act was not designed a punishment for the Papists, but a protection for ourselves."†

End of the reign of James II.

A vote for a supply was carried by a ministerial majority; but such a storm was excited, that the King immediately dissolved the parliament, and ruled thereafter without the pretence even of being restrained by law, till his combined violence and folly precipitated him from the throne.

* 2 Burn. O. T. 323. † 4 Parl. Hist. 1375. 5 Parl. Hist. 26.

## CHAP. CIV.

### CONCLUSION OF THE LIFE OF LORD COMMISSIONER MAYNARD.

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Jan. 22. 1689. Maynard returned to Convention Parliament.

Jan. 28. He supports the resolution that "King James had abdicated, and that the throne was vacant."

At the meeting of the Convention Parliament, Maynard was returned by Plympton, as well as by Beralstone, and chose to serve for the former borough. From his great age and experience, he was looked up to as an oracle of constitutional law in the discussions which arose respecting the vacancy of the throne. The House, according to his advice, having gone into a grand committee "on the state of the nation," he strongly supported the resolution that "King James II. having endeavoured to subvert the constitution of the kingdom by breaking the original contract between King and people, and by the advice of Jesuits and other wicked persons, having violated the fundamental laws, and having withdrawn himself out of this kingdom, has abdicated the government, and that the throne is thereby vacant." In answer to the objection that they were deposing the King, and making the monarchy elective, he said, "The question is not whether we can depose the King, but whether the King has not deposed himself. It is no new project; our government is mixed—not monarchical and tyrannous, but has had its beginning from the people. There may be such a transgression in the Prince, that the people will be no more governed by him." He admitted that the King being a Papist did not thereby make himself incapable of the Crown, there being hitherto no law to that effect; but he insisted that by James's multiplied violations of the constitution, he had broken the contract between the Crown and the people, and that he was to be considered as *civiliter mortuus*, with this unexampled accompaniment, that being *naturally alive* his heir was not designated; and it devolved upon the two Houses of Parliament to restore the equilibrium of the constitution by appointing to the throne,—which they would best do by offering it to Protestants descended from the

royal family, who might most worthily fill it for the public good.*

This resolution passed by a vast majority in the Commons, but was far from being agreeable to the Upper House, where a vote for a Regent was very nearly carried. The Lords insisted that the word "deserted," should be substituted for "abdicated," and that the clause respecting the "vacancy of the throne," should be entirely omitted.

Feb. 6. 1689. Manager of "free conference" with Lords.

This dispute between the two Houses leading to "a free conference" in the Painted Chamber, Maynard was appointed one of the managers to conduct it on the part of the Commons, and he boldly combated the high tory doctrines of the Earl of Nottingham, and the managers for the Lords. "When there is," said he, "a present defect of one to exercise the administration of the government, I conceive the declaring a vacancy, and provision for a supply for it, can never make the Crown elective. The Commons apprehend that there is such a defect now; and by consequence, a present necessity for the supply of the government. My Lords, the constitution, notwithstanding the vacancy, is the same; but if there be an irreparable breach of the constitution, that is an abdication, and an abdication infers a vacancy. It is not that the Commons do say the Crown of England is always and perpetually elective; but it is necessary there be a supply where there is a defect, and the doing of that will be no alteration of the monarchy from hereditary to elective. As to the pretended Prince of Wales succeeding rightfully as heir, I say no man can now be called heir of James II. We have a maxim in law as certain as any other, *Nemo est hæres viventis.* His heir is now *in nubibus.* What shall we do till he is dead? The Crown cannot descend till then."

His argument with the Earl of Pembroke.

The Earl of Pembroke tried to answer this technical reasoning by saying, "I cannot directly name him that hath the immediate right; but it is enough to prevent a vacancy that there is, and must be, an heir or successor, let he be who he will." *Maynard.*—"But your Lordship will neither

* 5 Parl. Hist. 36. 40. 45.

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agree that it is vacant, nor tell us how it is full. Is James King? Then obey him. But you allow that he is not to be obeyed. Then he is not King. Tell us, then, who is King, if King James be not. But if there be now no King, the throne is vacant." *Pembroke.*—" Sure, Mr. Serjeant, you agree, that notwithstanding Charles II. was abroad at his father's death, and did not actually exercise the government, yet in law he was not the less heir for that; nor was the throne vacant." *Maynard.*—" That is not like this case, because there the descent was legally immediate; but there can be no hereditary descent during King James's life. Therefore, unless we declare and fill up the vacancy, there must be an everlasting war entailed upon us; his title continuing, and we opposing his return to the exercise of his prerogatives. Pray, my Lords, consider the condition of the nation till there be a government; no law can be executed, no debts can be compelled to be paid, no offences can be punished, no one can tell what to do to obtain his right or defend himself from wrong. You still say the throne is not void, and yet you will not tell us who fills it. If once you will agree that the throne is vacant, it will then come orderly in debate how it should, according to our law, be filled. If our law is silent, then we must look to the law of nature (above all human laws), and provide for the public weal in such an exigency as this."

Feb. 7. 1689. The two parties separated, probably without any change of private opinion among them; but the Lords, frightened by the horrors of anarchy which Maynard had painted, next day resiled, and sent a message that they agreed to the resolution of the Commons without any amendment. [Feb. 13.] "The Declaration of Rights" soon followed, and William and Mary were upon the throne.*

Feb. 19. 1689. Maynard supports the turning of the "Convention" into a "Parliament."

Maynard strongly supported the first measure of the new reign, which was by resolution to prevent the dissolution of the "Convention," although it had been called—not by royal writs—but by letters from the Prince of Orange. He was conscious that the high Churchmen and the Tories had already

* 5 Parl. Hist. 72. 89, 90. 103.

forgot their recent dangers and deliverance; and if a new parliament had been summoned, would generally have voted for adherents of the abdicated sovereign. He said, therefore, "On the consequence of this debate will be the safety of the nation, and of the Protestant religion. I think we are a parliament. What is a parliament but King, Lords, and Commons? The convention in which I sat, 12 Charles II., resolved, that without a writ from the King we were a parliament. We acted on the greatest law in the world, which is recorded in the Twelve Tables, *Salus populi suprema lex esto.* We sat here before the King was declared, and much more may we now. There is a great danger in sending out writs at this time, if you consider what a ferment the nation is in; and I think the clergy are out of their wits; and I believe if the clergy had their wills, few of us would be here again. You will not declare yourselves no parliament, unless *you* are out of your wits. As for the clergy, I have much honour for high and low of them; but I must say they are in a ferment; there are pluralists among them, and when they should preach the gospel, they preach against the parliament and the law of England."* His advice was followed, and there was no dissolution till the following year, when men's minds were more tranquillised, and William's success in Scotland had weakened the doctrine of divine right, although even then a majority of Tories was returned.

Maynard made First Lord Commissioner of the Great Seal.

The resolution being taken to separate the judicial from the political duties hitherto intrusted to the one individual who held the Great Seal, and to have several Judges sitting together to despatch the business in the Court of Chancery, the offer was made to the veteran Maynard to place him at the head of them. Although he was now in his 88th year, his mental faculties remained quite unimpaired. Such activity and spirits did he likewise possess, that in spite of several generations of younger leaders who had successively sprung up to compete with him, his practice at the bar remained with him undiminished. Forgetting how short a period he could by the course of nature now enjoy it, he felt

* 5 Parl. Hist. 124. 128. 131.

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a severe pang when required to sacrifice his fees for an office which he dreaded might be very precarious. However, after some hesitation he accepted it, intending perhaps after various examples of that age, if he should lose it, again to practise as an advocate, and to argue that all such of his judicial decisions, as when cited against him, should appear to impugn the positions he had to sustain for his new clients, were erroneous. His brother Commissioners, Keck and Rawlinson, though considered sound lawyers, were unknown to the public; and he had nearly as much *éclat* as if he had been appointed Lord Chancellor.

April 17. 1689. Lords Commissioners sworn in and installed.

They received the Great Seal in Hilary vacation*, and on the first day of Easter Term, they were duly inaugurated in Westminster Hall. "Before they entered upon any business, they took the oaths usually administered to the Lord Chancellor or Lord Keeper (*mutatis mutandis*), the book being held to them by the Master of the Rolls†, and the oaths read to them by the Clerk of the Crown."

A. D. 1689. New Great Seal.

King James's Great Seal fished up from the river Thames was for some time used, but on the 23d of May an order was made by the King in Council for a new Great Seal, representing his Majesty and his spouse sitting together lovingly on the throne; and this being soon engraved, was used till Mary's death.

Act to settle the jurisdiction and precedence of the Lords Commissioners.

But serious difficulties arose respecting the jurisdiction and precedence of the Lord Commissioners; for, except during the Commonwealth, such an arrangement for the transaction of Chancery business had never been attempted, and no weight was given to Cromwellian precedents. To obviate these difficulties an Act was passed "for enabling Lords Commissioners of the Great Seal to execute the office of

* On account of the interregnum Hilary Term had not been kept, and the administration of justice had been completely suspended. In consequence an act was passed (1 W. & M. c. 4.) "for renewing actions and process lately depending in the courts at Westminster, and discontinued by the not holding of Hilary Term, and for supplying other defects relating to proceedings at law," whereby it was enacted, among other things, that all offences committed during the interregnum, which was reckoned from the 11th December, 1688, to the 12th March, 1689, should be laid in indictments, to be instead of "contra pacem *Regis*," "contra pacem *Regni*."

† Cro. Office Min. fol. 133.

Lord Chancellor or Lord Keeper," which enacted that they should have the same power as the Lord Chancellor or Lord Keeper, two being required to put the Great Seal to any instrument, and one being authorised to hear interlocutory motions — all having precedence next after Peers and the Speaker of the House of Commons. *

Complaints against Maynard and the Lords Commissioners.

Maynard continued to hold his office along with Keck and Rawlinson till the end of Easter Term, in the following year. They were allowed to be diligent, patient, and upright, but their despatch of business did not give so much satisfaction as was expected. People began to suspect that Equity suits differing so much from actions at law were better adapted to the cognisance of a single judge: the Lords Commissioners sometimes differed in a manner not edifying: Maynard, without official political functions, still continuing a member of the House of Commons, used to attend there when his presence was needed in the Court of Chancery; and being deprived of the exercise which he had taken for above sixty years by walking up and down Westminster Hall, and making speeches at the bar, his health suffered, and his infirmities multiplied upon him.

The printed Reports of Chancery during his year of office give us a very imperfect notion of his judicial powers, as they almost all begin the judgment with the words "*Per Curiam,*" without distinguishing what was said by the several Commissioners.

Decisions of Lord Commissioner Maynard.

Once I find what I consider doubtful doctrine laid down "*Per Lord Maynard,*" † that unless a submission to arbitra-

* 1 W. & M. c. 21. There are some curious entries in the journals respecting the progress of this bill through the Two Houses. A clause was introduced in the Lords to forbid the sale of the office of Master in Chancery, which "Lord Maynard" contrived to get thrown out. This might have induced Swift to write in the margin of his copy of Burnet, where an anecdote is related to Maynard's honour, "He was an old rogue for all that." See last edition of O. T. iii. 341. The bill was brought in and read a first time the 18th of March. The clause about selling masterships was added in committee on the 25th of March; but after a conference between the Two Houses on the 20th of June was rejected, and clauses forbidding the sale of the office of *Custos Rotulorum* were substituted for it. — *Lords' Journ.* 1688–9.

† He was always so designated while Commissioner of the Great Seal, the title of "Lord" added to the Christian name being given to the Chief Justices, as "Lord Hale," "Lord Holt;" while in Scotland the custom was and is for a

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tion contains the words "*ita quod* an award be made *de et super præmissis*, &c." an award on a part is binding, although it leaves the residue of the controversy unsettled *; but in the only other case in which his separate opinion was given respecting the right of the half blood to have administration, and an equal share of personal property with the whole blood, — the decree which he recommended being appealed from, after civilians and common lawyers had been heard on both sides, it was affirmed by the House of Lords. †

His speeches in the House of Commons.

There being then no statute to vacate seats in the House of Commons on accepting an office of profit under the Crown, or to disqualify any commoner from sitting in that assembly, Maynard not only continued to represent Plympton during the remainder of the Convention Parliament, but he was re-elected for the same place in the Parliament called in the spring of the following year, and he took rather a prominent part in the debates till he finally retired from public life. In the spirit of the Whigs of that day, he strongly supported the Bill for disarming Roman Catholics, saying, "We are so mealy-mouthed and soft-handed to the Papists that it occasions their insolence. I think it is fitting that all Papists should resort to their own dwellings, and not depart without licences from the next Justices; and another thing that all those of that religion bring all their fire-arms in, unless for the necessary defence of their houses, to officers appointed. I would not imitate their cruelty. I would let them have their religion in their private houses — but no harbouring of Priests or Jesuits. And if any Papist have a hand in firing houses, he should be compelled to help to rebuild them." ‡ The Lord Commissioner was carried away so far by religious zeal that he not only spoke in favour of increasing the cruel sentence upon Titus Oates, but actually stood up for the veracity of that impostor, and seemed still alarmed by the perils of the Popish plot. §

March 16. 1689.

Judge to be called Lord with his family name, or the name of his estate, at his election, as "Lord Jeffrey," "Lord Corehouse."

* Hide *v.* Cooth, 2 Vernon, 109.

† Crooke *v.* Watt, 2 Vern. 124.

‡ 5 Parl. Hist. 182, 183.

§ Ib. 293, 294.

His next appearance is more creditable to him. Sir Adam Blair and other commoners had been detected in distributing a declaration of King James from Ireland, where he was then established, denouncing the Prince of Orange as an usurper of the English throne; and it was proposed that the House of Commons should impeach them before the Lords for high treason. Maynard, taking a juster view of this subject than in the Parliament at Oxford, said, "I am against impeachment of these persons that they may be punished. Prosecute them by way of indictment, and then you may punish them severely and legally. One man condemned and punished at common law will work more upon the people than ten impeachments." * This opinion was overruled, but the impeachment proved abortive. †

June 13. 1689. He objects to impeachment of commoners for high treason.

Holding an office at the pleasure of the crown, but not being a member of the cabinet, the old patriot showed his independence by occasionally censuring the conduct of the government. He was particularly severe against the administration of the navy. "I hear," said he, "there are young men put to command ships that never were at sea before, because they are well affected to the present settlement. The question used to be, '*Is he a godly man?*' and he was employed. I asked them, '*Can a godly man, because he is godly, make a watch or a pair of boots?*'" ‡

He censures the government.

On the question of privilege, which arose on the arrest of the young Earl of Danby, then a member of the House of Commons, for sailing in his pleasure-yacht, Maynard violently took part against the Earl of Nottingham, who had issued the warrant, saying, "At this rate, we may all be imprisoned and whipped to our lives' end. Vote it a breach of privilege, and sit not mute upon so plain a breach." §

June 28. 1689. His fears of arbitrary arrest.

* 5 Parl. Hist. 306. † 12 St. Tr. 1207—1234.

‡ 5 Parl. Hist. 332.

§ 5 Parl. Hist. 365. This reminds me of a speech I heard the first circuit I went—from Mr. Justice Heath, who was then as old as Maynard, and might almost have remembered him. A man charged with felonious violence to a female appearing to be innocent, by reason of the consent of the prosecutrix, the Judge said, "Gentlemen of the jury, acquit the prisoner. If such a scandalous prosecution were to succeed, *which of us is safe?*"—At the same assizes, a man convicted of murdering his wife being asked what he had to say why sentence of death should not be passed upon him, gave a very moving account of his wife's misconduct, and the provocation he had received from her. *Heath, J.* "Prisoner,

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He reprimands a young member.

Having sat in parliament with the great-great-grandfathers of some of the present members, he seems to have been permitted considerable licence in debate. A young gentleman who opposed the bill for restoring corporations, drew down upon himself this reprimand.—*Serjeant Maynard.* "I have heard that to-day which makes my ears to tingle. There is a bill brought in to restore corporations. It has been committed, and ordered to be engrossed, and a gentleman starts up and prays that it may be thrown out; certainly he is but a young parliament-man. If those surrenders of charters stand, they may make what parliament they will at court; and, formerly, he that should have named such a thing should not have come to the bar, but gone to the Tower." *

But, not afraid of unpopularity, Maynard boldly counteracted the attempt of the Tories to cripple the new government by withholding the necessary supplies. Said he, "The King must not be left necessitous, or the people will suffer. The revenue of the crown-land is gone; it is aliened from him; he can have nothing but from parliament. Consider *quantum, quomodo, et quamdiu,* and bear in mind that the grant is for the necessary preservation of your liberties." †

May 1. 1690. His last speech in parliament.

Maynard's last speech in parliament was on the Regency Bill,—for vesting in the Queen the powers of government in England while the King should be absent in Ireland. With many professions of respect for Mary, he condemned this arrangement,—rather on narrow and technical grounds,—saying, "If the Bill pass as it is, all the justices of the peace in England are gone. All the regal power is at present acted in the name of the King and Queen; how are they now to be distinguished in the whole regal government? In the King's absence do you take all power from the King, that he can do nothing but by commission from the Queen? This noble lady, the Queen, has so demeaned herself, that all would readily trust her personally, but no wise man will trust where he cannot remedy. If this new commission be

you were wrong *in point of law.* You must therefore be taken from hence to the place from whence you came, and from thence to the place of execution, and there you must be hanged by the neck till you are dead; and may the Lord have mercy on your soul!"

* 5 Parl. Hist., 511.

† Ib. 552.

granted by authority, does not the former authority determine? Being derivative from it, the King has it no more; it is wholly in the Queen. All that we have done for our religion and properties, on a sudden to be put on a moot point like this! We are fallen into a wilderness entangled by our enemies; God send us well out of it! No man can wish better to the commonwealth than I do; if that stand, I care not what becomes of me. The King to have power in Ireland, and none here! The thing is so great, that I am upon my knees lest we should be swallowed up by enemies, or betrayed by our friends." *

The act nevertheless passed †, and none of the evils which haunted the imagination of the Lord Commissioner arose out of it. William continuing a confiding husband, and Mary a most submissive wife,—on his return, after the battle of the Boyne, the frame of government, as settled by the Bill of Rights, was in all respects restored.

**Maynard resigns his office.**

Whether Lord Commissioner Maynard's last speech gave offence to the Court, or was supposed to smell of apoplexy, and therefore he was displaced against his will,—or whether he spontaneously wished to retire, from the consciousness of increasing infirmities, from the apprehension of the growing complaints of the suitors in Chancery, or from a Christian wish to have a little space for contemplation before the great change which he was certain could not be far distant,—in a few days after the Regency Bill received the royal assent another commission passed for executing the office of Chancellor, the new Commissioners being Sir JOHN TREVOR, Sir William Rawlinson, and Sir George Hutchins. I have in vain tried to trace the true cause of Maynard's removal or voluntary resignation; and I will not substitute plausible conjecture for authenticated fact. He appeared in his place in the Court of Chancery, for the last time, on the 14th of May 1690, when he gave judgment in the important case of *Levet* v. *Needham*, on the construction of a will. ‡ Next day the new Lords Commissioners were sworn in, and he—destined never more to revisit Westminster Hall or St. Ste-

* 5 Parl. Hist. 617. 623. † 2 Wm. & Mary, c. vi. ‡ 2 Vern. 137.

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phen's Chapel—retired to his country-house at Gunnersbury, near Ealing, afterwards famous as the residence of the Princess Amelia, daughter of George II. Here he enjoyed but short repose from the labours of his profession and the anxieties of politics. A complication of diseases soon assailed him, which, perhaps, he was the less able to combat from having no mental occupation, and being deprived of the pleasure of casting up his fee-book or calculating when another gale of salary would become due. He expired on the 9th day of October, 1690, in the eighty-ninth year of his age. He is said, with his last breath, to have "railed at the Papists."

His death.

His wealth.

He had amassed an immense fortune from his professsional gains. On one Western circuit, in the year 1647, he received in fees 700*l.*, the largest sum theretofore made on one circuit by any barrister*; but in the prosperous times which followed, his profits must have been still more considerable. Alas! however, although Lord Coke says that, by the special blessing of Heaven on the law, lawyers rarely die childless or intestate, Maynard left behind him no posterity from any of his three marriages, and his riches were distributed among collateral relations of whom he knew nothing. For the mere pleasure of what he considered a clever legal trick [or *trickum in lege*], he is said to have rendered nugatory the settlement made on his marriage with his third wife. But he was so much hated and envied by thorough-going churchmen, who piously believed that all presbyterians should be burnt for the good of their souls, that, although he was by no means a man of high moral qualities, the grosser stories to his disadvantage should be received with some distrust.

Action brought by him for defamation.

According to Roger North, who was intimately acquainted with him, and had a great spite against him, he once brought a very foolish action of slander against a man who had told an anecdote concerning his cheating a client on the circuit. Having, by virtue of his privilege as a Serjeant, sued in the Court of Common Pleas, and laid the venue in Middlesex,

* Whitelocke, leader of the Oxford circuit, records the fact in a tone of wondering envy. "I attended the house, and Maynard and I talking of our circuit gains, he told me that he got on the last circuit 700*l.*, which I believe was more than any one of our profession got before." Mem. 273. Oct. 1649.

the trial came on, at Nisi Prius, before Lord Chief Justice North, who was determined to make game of the old republican.* "The witness telling the story as he swore the defendant told it, said that a client came to the Serjeant and gave him a basket of pippins, and every pippin had a piece of gold in it. *Those were golden pippins,* quoth the Judge. The Serjeant began to puff, not bearing the jest: so the witness went on. And then, said he, the other side came, and gave him a roasting pig (as it is called in the West), and in the belly of that there were fifty broad pieces. *That's good sauce to a pig,* quoth the Judge again. This put the Serjeant out of all patience, and speaking to those about him, *This,* said he, *is on purpose to make me ridiculous.*" The Serjeant ultimately failed in his action, for the story "used to be told of Noy, and all the cock lawyers of the West, and had been repeated by the defendant of Maynard, the reigning cock, as mere merriment, over ale, without intent to slander." †

His conduct to the woman who took care of his hat at Westminster.

Roger, whose soul must have migrated into Jemmy Boswell, gives us the following anecdote of Maynard, in which he himself makes rather a contemptible figure. "One afternoon, at the *nisi prius* Court of the Common Pleas in Westminster Hall, before the Judge sat, a poor half-starved old woman, who sold sweetmeats to schoolboys and footmen at the end of the bar, desired the Serjeant to pay her two shillings for keeping his hat two terms. She spoke two or three times, and he took no notice of her; and then I told the Serjeant *the poor woman wanted her money,* and *I thought he would do well to pay her.* The Serjeant fumbled a little, and then said to me, *Lend me a shilling. Ay, with all my heart,* quoth I, *to pay the poor woman.* He took it, and gave it to her; but she asked for another. I said, *I would lend him that also, to pay the woman. No, don't, boy,* said he, *for I never intend to pay you this.* And he was as good as his word, for however he came off with that woman, having been, as they say, a wonderful charitable man, I am sure he died in

* He used to be called reproachfully "one of the tribe of forty-one." Life of Jeffreys, 73.

† Life of Guilford, i. 235.

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my debt. But in this manner (as I guess he intended) I stood corrected for meddling." *

"A great man," however, Roger pronounces him to have been, "since his natural and acquired abilities, *and the immense gains he had by his practice*, justly entitle his name to that epithet;" adding this character of him—"to give him his due, he was, to his last breath, at the bottom, true as steel to the principles of the late times when he first entered upon the stage of business. Being an artful as well as learned lawyer, he would lay notable snares; but when discovered, never persisted, but sat down, and for the decorum of bar practice of the law was an excellent pattern." †

His attempts to mislead the Judges.

His invention of law authorities to suit his purpose.

Sometimes he was suspected of inventing law authorities to mislead the Judges. Chief Justice Pemberton having ruled a point according to a case which the Serjeant cited from memory and which never could be found, afterwards complained of having been bamboozled by him, saying, "My brother Maynard might as well have tossed his cap into the air, or have laughed in my face."—Yet such was his reputation for law, that even Judge Jeffreys was sometimes afraid to overrule him. This ermined ruffian having on one occasion almost annihilated Mr. Ward, a junior barrister, who argued a point before him, and severely rebuked him, saying, "Do not make such discourses *ad captandum populum* with your flourishes; I will none of your enamel, nor your garniture," the Serjeant, who was his leader, having got in his word, quietly stated how the law really stood, and so clearly demonstrated his position to the satisfaction of all the bar and all the by-standers, that the Chief Justice was for once shamed out of his insolence, and acquiesced.

Beyond the precincts of the law Maynard's vision was very

* Life of Guilford, i. 236. The following passage respecting Samuel Johnson must be by the narrator of the above anecdote of Serjeant Maynard. "One day I owned to him that I was occasionally troubled with a fit of *narrowness*." "Why, Sir," said he, "so am I. *But I do not tell it.*" He has now and then BORROWED A SHILLING of me; and when I asked him for it again he seemed to be rather out of humour. A droll little circumstance once occurred: as if he meant to reprimand my minute exactness as a creditor, he thus addressed me;—Boswell, *lend* me sixpence — NOT TO BE REPAID." *Boswell's Life of Johnson*," iv. 203.

† Life of Guilford, i. 238.

contracted. Along with wiser men who lived in the sixteenth and seventeenth centuries, he had a great dread of the increasing size of the metropolis. He was alarmed by the town being extended so far to the west as St. Giles's; and he warmly supported a bill, which was rejected, "to prevent further building in London or the neighbourhood." "This building," he said pathetically, "is the ruin of the gentry and ruin of religion, leaving so many good people without churches to go to. This enlarging of London makes it filled with lacqueys and pages. In St. Giles's parish, scarce the fifth part can come to church, and we shall have no religion at last."

His alarm at London extending to the west of St. Giles's.

Character of Maynard by Warburton.

The most elaborate character of Maynard is by Bishop Warburton, in a parallel between him and his contemporary Whitelock. "They were both lawyers of family, and in the Long Parliament; both of the presbyterian faction; both learned and eminent in their profession; moderate, sage, and steady. So far they agreed. In this they differed: Maynard had strong parts with a serious modesty; Whitelock was weak and vain: and, by these defects only, more self-interested. A sense of honour made Maynard stick to the presbyterian faction, and to fall *with* them; but, as he had much phlegm and caution, not, like Hollis and Stapleton, to fall *for* them. So that he was never marked out by the Independents for their first sacrifices. On the contrary, Whitelock forsook his party in distress; but, as he had the other's moderation, it was by slow and gentle degrees; and so, as it happened, decently. Maynard, by adhering steadily, but not violently, to the party he set out with, was reverenced by all; and had he not been more intent on the affairs of his profession than on public business, might have become considerable by station. He went through the whole reigns of Charles and James II. with the same steady pace, and the same adherence to his party; but, by his party, I rather mean presbytery for the sake of civil liberty, than to civil liberty for the sake of presbytery." *

I ought to make special mention of Maynard's "Edition of the Year Books," a work to which he devoted himself as

* Warburton's Letters to Hurd, p. 211.

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eagerly and delightedly as ever refined critic did to an edition of Homer or Shakspeare.*

His two celebrated "*mots.*"

Yet, from the mouth of this same dull black-letter lawyer came two of the most felicitous sayings in the English language, — envied by Congreve and Sheridan. Jeffreys having once rudely taunted him with having grown so old as to forget his law. "True, Sir George," replied he; "I have forgotten more law than you ever learned."

1. to Jeffreys.

2. to King William.

When the Prince of Orange first took up his quarters at Whitehall, on James's flight, different public bodies presented addresses to him, and Maynard came at the head of the men of the gown. The Prince took notice of his great age, and observed that he must have outlived all the lawyers of his time. "If your Highness," answered he, "had not come over to our aid, I should have outlived the law itself."†

His panegyric on trial by Jury.

We ought to value still more highly his encomium on the great palladium of our freedom: "Trial by Jury," said he, "is the subject's birthright and inheritance, as his lands are; and without which he is not sure to keep them or any thing else. This way of trial is his fence and protection against all frauds and surprises, and against all storms of power."‡

* I subjoin the title-page of the first volume, the gipsey jargon of which may amuse the reader:

"LES
REPORTS
DES
CASES
argue & adjudge in le Temps del'
Roy Edward le Second,
Et auxy Memoranda del' Exchequer en Temps le
Roy Edward le Primer.
Selonq; les ancient manuscripts ore remanent les maines de Sir Jehan Maynard
Chevaler Serjeant de la ley al sa Tres Excellent Majesty
Le Roy Charles le Second.
ovesq; un perfect Table des Matters en les dits Cases de Temps del' Roy
Edward le Second colligee per le mesme Serjeant.
1678.

† 2 Burn. O. T. 550. The exact contemporary of Maynard, to whom he was introduced by William, was the Duke of Schomberg, killed a few months after at the battle of the Boyne in his eighty-third year — who a short time before he set off for Ireland, being asked whether he did not mean to give himself the repose to which his years entitled him, replied, "a good general makes his retreat as late as he can." By his subsequent conduct, as well as courage, he added greatly to the glory of the octogenarians.

‡ Grey's Debates, i. 447.

# CHAPTER CV.

## LIFE OF LORD COMMISSIONER TREVOR.

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May 15. 1690.

New set of Lords Commissioners.

NOTWITHSTANDING the complaints raised against the Court of Chancery under Lord Commissioner Maynard, the King and his Ministers thought that the experiment of having several co-ordinate Judges jointly to do the business there had not yet been fairly tried, and a new commission (as we have seen) was issued, with Sir JOHN TREVOR at the head of it.* Rawlinson, one of the former commissioners, was continued, and Sir George Hutchins, another new one, was introduced, but though a sensible man and a sound lawyer, he likewise was too obscure and uninteresting to deserve further notice.

Reasons for writing Life of Lord Commissioner Trevor.

If I were to select for commemoration those only who displayed amiable and praiseworthy qualities, I fear that Sir John Trevor ought equally to be consigned to oblivion; but it is my duty to trace his career, for though devoid of principle, he was gifted with singular energy and versatility, and he acted a conspicuous part in the most interesting period of our history.

His descent.

He was descended from Edward ap David, an illustrious Welchman, who no doubt carrying up his own pedigree to Noah, was the common ancestor of several noble and distinguished families taking the surname of Trevor.† Our John was the second son of John Trevor of Brynkinalt, in the county of Denbigh, Esq., by an aunt of Lord Chancellor Jeffreys. He was born during the civil war in the reign of Charles I. Notwithstanding the high "Welsh *plood* in his *pody*, which all the water in Wye could not wash out," his family was at this time in reduced circumstances, and, being a younger brother, great difficulty was found in

* Books of Privy Council, June 3. 1690. Cr. Off. Min. fol. 137.

† Among others, that of Theodor Trevor, Earl of Hereford. Yorke's Royal Tribes of Wales. Collins's Peerage.

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His defective education.

procuring him education, and giving him a start in life. It is certain that he never was at the university, and it is supposed that he never was at any higher seminary than a village school. He likewise had the misfortune to have a cast in his eye, which alarmed all who saw him. Arthur Trevor, a cousin, who was an eminent barrister, hearing how sadly the Brynkinalt folks were at a loss to dispose of "squinting Jack," took compassion upon them, and sent to London for the lad. On his arrival, he displayed very lively parts, although his manners were rather uncouth, and he could not speak a sentence of correct English. He was now put to copy papers and go messages. Roger North gives us an amusing description of this part of his career. "He was bred a sort of clerk in old Arthur Trevor's chamber, an eminent and worthy professor of the law in the Inner Temple. A gentleman that visited Mr. Arthur Trevor, at his going out, observed a strange looking boy in his clerk's seat (for no person ever had a worse sort of squint than he had), and asked who that youth was? '*A kinsman of mine,*' said Arthur Trevor, '*that I have allowed to sit here to learn the knavish part of the law.*' This John Trevor grew up, and took in with the gamesters, among whom he was a great proficient: and being well grounded in the law, proved a critic in resolving gaming cases and doubts, and had the authority of a Judge among them; and his sentence for the most part carried the cause." *

He is brought to London.

He is placed as a clerk in a Barrister's chambers.

He is reckoned a great lawyer among gamesters.

His early ambition.

But, in truth, though he occasionally kept loose company, it was with a view to his advancement, and his office of "Lord Chancellor of the Jockey Club" he only considered as a stepping stone to the woolsack. From his arrival in London, he cogitated night and day how he was to become rich and great, and he made his love of pleasure always subservient to his avarice and ambition. Being entered a student of the Inner Temple, he studied the law with much assiduity, and rendered himself well versed in all branches of his profession. Ever looking to the main chance, he had formed an extensive connection among attorneys and their clerks while in the

His diligence.

* Life of Guilford, ii. 27, 28.

office of his cousin Arthur, and when he was called to the bar, being particularly skilled in "the knavish part of the law," he soon got into extensive practice, although not of the most reputable description.

Patronized by Jeffreys. A.D. 1678. His rapid advancement.

His countryman and cousin, Jeffreys, was rising into high repute, and showed him kindness. Through the interest of Sir George, who had now renounced Shaftesbury and the Whigs, he was made a King's counsel, introduced at Court, returned a member to the House of Commons, and put in the way to the highest preferments. I am sorry from the constant allusions to the topic in contemporary writings to be obliged to mention that he was likewise supposed to owe his advancement to another member of the same family. He had been a lover of the gay widow of a Montgomeryshire Squire, — daughter of Sir Thomas Bludworth, Lord Mayor of London, — and this *liaison* was still supposed to continue, after she became Lady Jeffreys, and he had been advanced to high stations, in which gravity of character and purity of morals ought especially to be expected.* It was said that Sir George was not unaware of his own disgrace, and a story went, that Scroggs and he once having quarrelled in their cups, the former taunted him with it, but that they were very soon good friends again, and jointly pursued their infamous designs against law, justice, and humanity.†

Suspected of an intrigue with Lady Jeffreys.

* These publications are generally too gross for the present day; but, to show the manners of the age, I will venture on one more modest specimen from a Ballad published on Jeffreys soon after his second marriage: — (which the ladies may skip)

"But to allay the secret so hot,
George from the Court has knighthood got,
Bestowed upon him for his bauling
A royal mark for catterwauling.
There's something more that George has got
(For Trevor left him who knows what)
A teeming lady-wife, &c."

† This story is referred to in the following doggerel: —

"But one thing more must not be past
When George with Clodpate[1] feasted last,
(I must say Clodpate was a sinner,
To jeer his brother so at dinner).
He by his almanack did discover
His wife scarce thirty weeks went over,
Ere she, poor thing, in pieces fell,
Which made Mouth[2] stare and bawl like hell.

[1] Scroggs. [2] Jeffreys.

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His career in the House of Commons in the reign of Charles II.

Trevor never seems to have made any figure in the House of Commons as an orator, but he was busy and bustling, and by activity and intrigue acquired considerable influence among the members. He occasionally spoke, and he made up for his want of eloquence by the slavish doctrines which he inculcated. The exercise of the royal prerogative he maintained was by no means to be inquired into by parliament. "'Tis the King's prerogative," said he, "to make peace or war; 'tis he that makes it, and he that breaks it. The disciples came to our Saviour in the ship, and said, 'Lord, save us or we perish;' and we say no more to the King." When the Popish plot broke out, falsely thinking to please Charles II., who, in this instance, displayed more generosity than he had credit for, he said, "I would satisfy the loyal subjects of England, and pass a vote in plain English to make an address to the King that the Queen and her family, together with all reputed or suspected papists, may be removed from Whitehall." The vote was carried by acclamation, but was censured by his Majesty.

Trevor took an active part in the infamous prosecution of Lord Stafford, saying, "Upon the evidence, I am satisfied clearly that this Lord Stafford is guilty, and so I would make no manner of bones to demand judgment. I would have no more delay, but go up and demand judgment." What was more to his credit, he boldly, though ineffectually, attempted to defend Jeffreys when attacked in

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What then, you fool! some wives miscarry,
And reckon June for January.
This Clodpate did assert as true,
Which he by old experience knew;
But all his canting would not do,
George put him to't upon denial,
Which set him hard as Wakeman's trial.[1]
They rail'd, and bawl'd, and kept a pother,
And like two curs did bite each other,
Which brought some sport, but no repentance:
So off they went to Harris'[2] sentence,
Which soon they pass'd, against all laws,
To glut their rage with popish cause,
For which injustice, knaves! we hope
You'll end together in the rope."[3]

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[1] For the Popish Plot.
[2] See Harris's trial for a libel, 7 St. Tr. 928.
[3] Life of Jeffreys, 39.

the House of Commons for obstructing the right of petitioning in the great controversy between the "Petitioners" and the "Abhorrers." "This gentleman," said he, "has been Recorder of London many years, and it is a place of great authority; and it is his happiness that there is no evidence against him that he ever packed a jury, or has gone about to clear the guilty. He has been counsel for the King when persons were indicted for the horrid plot, and laboured himself worthily; and, if I may say so, he was too forward in prosecuting; if so, that may make some atonement for his forwardness in other matters. I hope in some measure you will take pity of him." Jeffreys was deprived of his recordership, but soon rallied from the blow, and revenged himself upon his enemies.*

May 30. 1685. He is made speaker in the reign of James II.

Such was Trevor's reputation as a high prerogative lawyer, that at the meeting of James II.'s only parliament in May, 1685, he was proposed by the government as Speaker, and of course was elected.† He succeeded in getting one supply bill passed. Presenting it according to the custom which then prevailed, that the King pending the session might pass it in person, he said, "We bring not with it any bill for the preservation or security of our religion, which is dearer to us than our lives: in that we acquiesce, entirely rely, and rest wholly satisfied in your Majesty's gracious and sacred word, repeated declarations and assurance to support and defend the religion of the Church of England as it is now by law established. We present this revenue to your Majesty without the addition of any conditional appropriating or tacking clauses, and we humbly beseech your Majesty to accept of it, and along with it our hearty prayers, that God Almighty would bless you with a long life and happy reign to enjoy it."†

His speech to the King in presenting a money Bill.

Every thing went smoothly during the first short session, till it was interrupted by Monmouth's rebellion; but when parliament again met in the end of the year, notwithstanding all the Speaker's efforts to repress free discussion, such symptoms appeared in the House of Commons of resistance to

* See 4 Parl. Hist. 543. 990. Grey's Debates. † Ib. 1349.

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tyranny, that a speedy dissolution took place, with a resolve to rule thereafter by prerogative alone. In the mean while, Trevor was rewarded with the office of Master of the Rolls*, Jeffreys having received the Great Seal, as Chancellor, about a month before.† From this time their friendship was at an end, and they became rivals and enemies.‡

Oct. 20. 1685. And Master of the Rolls.

Quarrels with Jeffreys.

Trevor's ambition was only inflamed by past success; and, with little disguise, he now aimed at the Great Seal. For this purpose he began to disparage Jeffreys as a lawyer; but Jeffreys being Chancellor, was revenged of him by reversing his decrees and discharging his most common orders.§ "Nay, more, it is said that the Chancellor set up officers of his own appointment to affront the Master of the Rolls by questioning his authority, and insulting him publicly on his seat, although they had not learning or credit to support their objections."‖ However, Trevor, far from succumbing with the abject submission which was expected, was bold enough to turn again when trampled upon; and, resolutely standing his ground, watched for an opportunity when Jeffreys might commit some serious mistake, or from some unlucky combination of circumstances might get into disgrace. Roger North says, that Trevor at this time, 'like a true gamester, fell to the good work of supplanting his patron and friend, and had certainly done it if King James's affairs had stood right up much longer; for he was advanced so far with him as to vilify and scold with him publicly at Whitehall.'"¶

He tries to undermine Jeffreys.

Trevor tried to excite an outcry in respect of the prosecution of Alderman Cornish, whom Jeffreys had pointed out as a victim, and declared "that if he pursued that unfortunate man unto execution, it would be no better than murder."** He had the address still to keep his footing at

* Rot. Pat. 1 Jac. 2. m 32. † Cr. Off. Min. fol. 121.

‡ The scandalous Chronicle asserted that his Honour now likewise broke with Lady Jeffreys, and was superseded in her affections by one Montfort, a comedian taken into the service of the Chancellor to make him laugh by mimicking the Judges — as a substitute for the ancient fool — an officer who does not seem to have been professedly kept by King or Chancellor after the Restoration. A libel on Jeffreys said,

"He now wears horns that are by M—t made,
T—r engaging in a different trade."

§ Life of Guilford, ii. 28. Yorke's Royal Tribes, 109, 110.

‖ Life of Jeffreys, 326. ¶ Ibid.

** Ante, Vol. III. p. 555.

Court; and, if Jeffreys on any occasion hesitated for a moment in complying with James's illegal and mad schemes, denounced him, in the royal circle, as disloyal, and, as soon as Jeffreys complied, contrived to have him denounced to the public as the author of a pernicious and unconstitutional measure.

Trevor had a formidable competitor in Williams, the Solicitor General, who conducted the prosecution against the Seven Bishops, and to whom the Great Seal was promised if he could obtain a conviction. By unbounded subserviency, Jeffreys did contrive to keep his office till after the landing of the Prince of Orange; but Trevor was gaining upon him, and, in July, managed to get himself sworn of the Privy Council, which was not then, as it often now is, a mere empty honour, but entitled the person on whom it was conferred to take a part in the measures of government. The entry in the Diary of Henry Earl of Clarendon, recording the batch of Privy Councillors now made, is rather amusing. "July 6. 1688. Sir John Trevor, Master of the Rolls; Caloner Tytus and Mr. Vane, Sir Henry Vane's son, were sworn of the Privy Council. Good God bless us! What will the world come to?"

He is made a Privy Councillor.

When acting with the advice of such councillors, James discovered that his nephew, the Prince of Orange, having landed in England, was a candidate for the throne. Trevor for a while stood aloof to see which would be victorious. On the return of the deluded monarch from Rochester, — misled by the transient symptoms of a reaction in his favour, Trevor declared for him, attended his levee at Whitehall, and assisted with Hamilton, Berkeley, Craven, Preston, and Godolphin, the only other councillors who remained faithful, in preparing a proclamation for suppressing tumultuary outrages — which was published in the London Gazette, and was the last act of sovereignty ever performed by a legitimist monarch in England. On James's final flight, Trevor joined the high Tories, who were desirous first of appointing William as Regent, and when they were beaten, of doing every thing to embarrass his government, — having devised

His conduct on the landing of the Prince of Orange.

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a plan with a double aspect,—whereby the King should either be compelled to go back to Holland, or to choose the Tory leaders for his ministers.

And under William and Mary. He is dismissed from office of Master of the Rolls.

As soon as William and Mary were proclaimed King and Queen, and William entered on the administration of the government, Trevor was removed from his office of Master of the Rolls, and Henry Powle, a good Whig, was appointed in his place.* Though returned to the Convention Parliament, he had taken no open part in the discussions respecting the settlement of the throne, from the hope that he might give no offence, and as he was allowed to be a good Equity Judge, his political misdeeds might be overlooked; but as soon as he was removed he entered into furious opposition, and did every thing in his power to thwart the measures of the government. Still he was no orator, and although he occasionally made short speeches he was chiefly prominent in guiding the measures of his party.† The only occasion when he took a leading part in the Convention Parliament was in opposing a Bill to disfranchise the borough of Stockbridge for bribery and corruption. He then delivered the earliest speech I find on record against parliamentary reform. "I never heard of boroughs dissolved before. I am afraid if this question pass, you, Mr. Speaker, and I, shall sit no more in that chair. I have the honour to serve for a borough in Devonshire (Beralstone), for which I am obliged to a member of the house (Lord Commissioner Maynard) and to the gentlemen of that country. If you break the ancient constitution of elections I know not the consequences." He then goes on to show that it was only on the petition of boroughs themselves that they had ever been exempted from sending representatives to parliament, and that the franchise once granted ought always to be preserved—thus concluding, "The security of the nation was ever thought in the mixture of this house. What shall then become of merchants to inform you of trade? The house stands upon

His speech against Parliamentary Reform.

* He sat for Beralstone, Serjeant Maynard who was first returned for that Borough having elected to serve for Plympton, for which likewise he was returned.

† See 5 Parl. Hist. 298. 410. 422. 432. 491. 520. 533.

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ancient constitutions, and I hope you will not remove old landmarks." The Bill was dropped,—contrary to the interest of the Jacobites; for I am afraid it must be confessed that it was in the small corrupt boroughs that the strength of the liberal party chiefly lay,—the county constituencies continuing long in favour of the exiled family.

Feb. 6. 1690. New Parliament. Two sections of the Tories.

The Convention Parliament having been dissolved, and a new one being called, there was a violent struggle at the elections between the contending factions, but the returns showed a decided majority in favour of the Tories. Of these a considerable number were zealous friends to King James, and would eagerly have recalled him at all hazards; but many, from a dread of Popery, were willing for the present to support the new *régime*, in the hope that something might hereafter occur to re-establish hereditary right; and a still greater number were only impatient to wrest power and place from the Whigs, and were ready, on their own terms, loyally to serve King William. At the head of this last section appeared the Ex-master of the Rolls. Being disappointed in his wish to represent his native county*, he had been returned for a rotten borough,—and shortly before the commencement of the session, after meetings with his friends who were assembling in London, he made an overture to the Court, that, if restored to the chair of the House of Commons, which

Trevor at the head of the jobbing Tories.

* I copy a letter written about this time to Sir John Hanmer by Sir John Trevor, the original of which is in the possession of his descendant, Lord Viscount Dungannon, who kindly communicated it to me.

Electioneering letter from Trevor.

"Honored Sir,

Your owne civilityes to mee are ill requited by this frequent troble, but I hope you have charity enough too, to beleeve I want not a proportionable sense of your favors; I perceive the tyde runs high in our country, and that my complexion will not answer their zeale; ffor the election in that county I perceive, Mr. Grosvenor, and Mr. Middleton, have prepared the country against mee by a discourse they have made of mee in reference to Sir George Booth and Sir Thomas Middleton's indemnity in the last Parliament, which tastes so little of truth, that Sir George Booth I beleeve will owne mee as one of the best friends hee had in that affayre from the beginning to the end. But if you please to use this to my advantage when you see cause, I shall most willingly owne the obligation to you: I have sent the writt by Mr. Crachly, who sets out tomorröw: Sir, I doe once more take the confidence to entreat your assistance in this affayre, which I was never concerned in before now, and am sorry I cannott have leave to come downe myselfe to attend it to redeeme my selfe from so unhandsome and so unfriendly a returne: But, I assure you, Sir, you will never find an occasion more agreeable to my temper, to oblige, Sir,

Your most ffaithfull, humble servant, JOHN TREVOR.

[illegible]

he had filled under James II., he not only would himself support King William, but that he would exert all the interest he possessed among the Tory party to bring over adherents. His proposal was agreed to,—and, to strengthen his arguments in favour of "Revolution principles," he was furnished with large sums of money to be distributed by him among the members of the new House of Commons who were thought formidable and venal.

[illegible]

Accordingly, on the first day of the session, the Commons being desired to choose a Speaker, Sir John Lowther, Vice Chamberlain to the King, rose and said, "that he conceived Sir John Trevor, both for his great experience in parliamentary affairs and knowledge in the laws, was every way qualified for that employment." The Tories were delighted with their apparent triumph, and the Whigs of course acquiesced in the nomination of the government. Trevor, who had been dismissed from his office exactly a twelvemonth before, as an adherent of "Popery and arbitrary power," was unanimously elected Speaker of William's first regular parliament. Being conducted to the chair by his mover and seconder, he acknowledged the great honour the House had conferred upon him, withal saying, "that he feared they had done themselves a great prejudice in making choice of him, and therefore he desired leave to disable himself before the royal throne, that they might thereby have an opportunity of making a better choice."* This farce of "disabling" was acted at the bar of the House of Lords, but Lord Chief Baron Atkyns, by the King's command, declared, "that the Commons could not by possibility have made a better choice than the Ex-master of the Rolls."

May 15. 1691. Made first Lord Commissioner of the Great Seal.

Trevor honourably performed his part of the contract, and not only himself did what he could in the chair for the government, but, with the assistance of the money supplied to him, made many converts from the doctrine of "divine indefeasible right," and was in such favour with William that, at the end of a few weeks, still continuing Speaker, on the the removal of Maynard, he was created First Lord Commissioner of the Great Seal. He afterwards obtained this

* 5 Parl. Hist. 547.

compliment from Burnet: "The Speaker of the House of Commons, Sir John Trevor, was a bold and dexterous man, and knew the most effectual ways of recommending himself to every government: he had been in great favour in King James's time, and was made Master of the Rolls by him, and if Lord Jeffreys had stuck at any thing, he was looked on as the man likeliest to have had the Great Seal: he now got himself to be chosen Speaker, and was made first Commissioner of the Great Seal: being a Tory in principle, he undertook to manage that party, provided he was furnished with such sums of money as might purchase some votes; and by him began the practice of buying off men, in which hitherto the King had kept to stricter rules. I took the liberty," adds the Bishop, "once to complain to the King of this method; he said he hated it as much as any man could do, but he saw it was not possible, considering the corruption of the age, to avoid it, unless he would endanger the whole." *

He distributes bribes among the members of the House of Commons.

Such satisfaction did Sir John Trevor continue to give as Speaker, in removing the scruples of refractory members when they came privately to consult him in his chamber on points of order, and in smoothing the progress of the measures of government through the house, that on the sudden death of Powle, his Whiggish substitute, he was appointed to succeed him †, so that he was, at the same time, Master of the Rolls, First Lord Commissioner of the Great Seal, and Speaker of the House of Commons.

He is restored to his office of Master of the Rolls, Jan. 13. 1693.

The Great Seal continued in the hands of the three Lords Commissioners, Trevor, Rawlinson, and Hutchins, till the beginning of the following month of May, but complaints had been multiplying against the administration of justice in the Court of Chancery, and these became so loud that they could no longer be neglected. Trevor was frequently absent on account of his political avocations; the other two were sometimes divided: when agreeing, their opinion did not carry much weight, and now that one of the three was Master of the Rolls, there was no satisfactory mode of reviewing the

Complaints against the Lords Commissioners of the Great Seal.

* O. T. iii. 57.

† He was sworn before the Lords Commissioners Rawlinson and Hutchins, himself still first Commissioner. Cr. Off. Min. fol. 140.

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decisions of that Judge. Besides, the experiment having been tried above three years, the profession and the public came to the conviction, which I believe has been since generally entertained, that from the nature of Equity suits they are best disposed of by a single Judge, he having the power, when legal questions of great difficulty arise, of referring them to a Court of common law, or calling in common law Judges to assist him.*

Difficulty respecting the Speakership of the House of Lords.

Considerable difficulty had likewise been felt respecting the Speakership of the House of Lords, where, according to immemorial usage, a Lord Chancellor or Lord Keeper ought to have presided. At the meeting of the Convention Parliament the Lords chose the Marquis of Halifax their Speaker, and, in the exercise of the power belonging to them to choose one of themselves Speaker in the absence of the Lord Chancellor or any Speaker named by the Crown, they continued day by day to re-elect the Marquis of Halifax, till the 19th day of October, 1689.† On that day Sir Robert Atkyns, Chief Baron of the Exchequer and Knight of the Bath, produced in the House Letters Patent addressed to him, authorising him "to do and execute all such things as the Lord Chancellor or Lord Keeper of the Great Seal should or might in that behalf do if he were personally present in the Upper House of Parliament." By virtue of this commission, he constantly acted as Speaker till the 14th of March, 1693, when he prorogued parliament in the names of their Majesties‡;

Lord Chief Baron Atkyns, Speaker.

* "All people were now grown weary of the Great Seals being in commission: it made the proceedings in Chancery to be both more dilatory and more expensive; and there were such exceptions made to the decrees of the Commissioners, that appeals were brought against most of them, and frequently they were reversed." 3 Burn. O. T. 148.

The Great Seal has never since been in commission, unless during a temporary embarrassment about the appointment of a Lord Keeper or Lord Chancellor; but the offices of Lord High Treasurer and Lord High Admiral have been in commission almost ever since the reign of Queen Anne.

† Till then the Journal each day begins with an entry in this form: "Marquis of Halifax chosen Speaker;" and thus concludes: "Marquis Halifax, Orator Procerum pro tempore, declaravit præsen. convent. continuand. esse usque in diem Veneris videlicet 25^um^ diem instantis Januarii 168$\frac{8}{9}$, hora decima auror. Dominis sic decernentibus."—*Lords' Journals.*

‡ On these occasions "he went to the usual place by the state."

On the 21st of January, 1691, "the Speaker was ordered for the future, when he shall speak to any lord or other person, to speak sitting with his hat on." On the 15th of January, 1693, an order was made which it would be highly for the advantage of the house if the Lord Chancellor would now enforce. "The Speaker is ordered to stop proceedings in case Lords are at the fire, sitting on the woolsacks, &c., requiring them *by name* to go to their places."—*Lords'*

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but serious inconvenience was experienced from the occupier of the woolsack, not only not being a member of the House, but not being a member of the government, and knowing nothing of the measures to be brought forward and carried. According to the then existing system, there neither was, nor was there any chance of there afterwards being, a law Lord in the House; which, not only in deciding appeals and writs of error, but in passing bills connected with jurisprudence and in discussing great constitutional questions, was thus likely to remain *inops concilii*.

May 2. 1693. Great Seal given to Lord SOMERS.

Great weight was, no doubt, likewise given to the consideration that there was now a most distinguished individual to whom, singly, all the duties of the highest office in the law might be intrusted with the applause of the nation. The Great Seal was therefore taken from the Commissioners, and intrusted to Sir JOHN SOMERS, as Lord Keeper.*

Rawlinson and Hutchins immediately sunk back into the insignificance from which they had been accidentally raised; but Trevor, still Speaker and Master of the Rolls—with singular activity of mind and talent for intrigue—continued to play an important part before the public, and if it had not been for his extreme indiscretion when he became the *bribed* instead of the *briber*, he probably would have reached the grand object of his ambition since, as before, the Revolution—which was to become Lord Chancellor, and to be created a peer.

Trevor in the confidence of the Princess Anne.

So "dexterous" was he that he not only continued in favour with William, but to be great in the next reign he contrived to insinuate himself into the confidence of the Princess of Denmark, and her maid or mistress, so that he was privately consulted by them in all that regarded the succession. While some discussion was going on in parliament respecting the designation of those on whom the Crown was limited, a meeting of the Princess and her friends was held, of which the following minute was made by Sir John Trevor†:

*Journals*. Anciently the Lords always sat on their appropriated benches according to their degrees and seniority — but the right reverend Prelates alone now regard this usage. If *precedence* is waved, *order* ought still to be preserved.

* Cr. Off. Min. fol. 140.

† The original, in his handwriting, now lies before me.

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Minute of consultation between Trevor and the Princess Anne.

"Tuesday evening, 22d Jan., 1694, at Berkley House,
Present, E. of Marlborough.

"*Princess.*—That she understood Debate in the House about the words 'Heirs and Succo[rs]' in the Style of Acts of Parliament. That she did desire that this matter should not interrupt their Consultations, or obstruct the King's business for the support of the Gover[t]. —That she had considered this matter, and was confident of the King's kindness and justice, and therefore did desire me that I would acquaint the House that she was willing and desirous that the words 'Heirs and Succors' might still continue in the style.

"I replyed that this was a matter of a high nature for me to deale in. That I was willing to serve her R. H. in any thing that might consist w[th] my Duty and Service to y[e] King and the House. But for my owne Justification, and least I might mistake in the matter of this importance, I did desire her Commands in writing under her hand; else I most humbly begged her excuse. To which she agreed."

Accordingly in an envelope indorsed in Sir John Trevor's hand, "The Princess's Letter to me—Heirs and Succ[rs]," and in a more modern hand, "From Queen Anne," there is the following letter, "For the Rt. Honble Sir John Trevor, Speaker of the House of Comons," in the handwriting of the Princess herself: "I have heard there was some question in the House concerning the words '*Heirs and Successors;*' as to the concern I may have in it I am very far from desiring any alteration of the style, and wish only that it may bee determined in such a way as may bring the least obstruction or delay to the King's affairs in Parliament."*

Trevor might have acquired a complete ascendency over Anne, and have become her Lord Chancellor and chief adviser, but a blow was now impending over him which for ever marred his fortunes.

In the beginning of 1695, the cry against bribery was

* I am indebted for these valuable reliques, now first submitted to the public, to the kindness of Sir John Trevor's representative, the present Lord Dungannon, who has himself written a very interesting account of those times. See Trevor's Life of William III.

violent, and the belief gained ground that the Court, the camp, the city, nay, parliament itself, was tainted, and that universal corruption prevailed. A motion was made in the House of Commons which must have caused general alarm, but which no one had courage to oppose—for the appointment of a committee "to inquire into the charges which were made against members,—with power to send for persons, papers, and records." On the 7th of March, the Committee reported "that there having been in the preceding session a bill pending in the House of Commons, promoted by the City of London, called 'the Orphan's Bill,' whereby a power was to be given to lay assessments on the public for the benefit of the Corporation, an entry had been found in the books of the Common Council, 'That Mr. Chamberlain do pay to the hon. Sir John Trevor, knight, Speaker of the House of Commons, the sum of 1000 guineas, so soon as the said Bill be passed into an Act of Parliament,'—that a hint had been given to the Common Council, that unless this sum were paid the bill would not pass—that Mr. Speaker knew of the order being made while the bill was pending—that when the bill passed two Aldermen and the Chamberlain waited on Mr. Speaker, with a compliment of thanks in the name of the City, for his kindness in furthering the bill, and an order for the said guineas which Mr. Speaker accepted—that two or three days after, Mr. Speaker sent a messenger into the City with the said order, and received the said guineas,—and that the said order was forthcoming with this indorsement thereon: 'The within mentioned 1000 guineas were delivered and paid unto the hon. Sir John Trevor, this 22d June, 1694, in the presence of Sir Rob[t] Clayton and Sir Jas. Houblon, which at 22*s.* exchange, comes to 1100*l.*'"

Charge of bribery against Trevor. *Jan. 12. 1695.*

Report of Committee.

Corruption being thus traced to the Chair, with a reasonable suspicion that it had communicated the taint to many members by the way, it was impossible for the House to retain any degree of credit with the people unless they declared their abhorrence of the guilt they had discovered, however much they might regret the exposure, or pity the victim. Accordingly a resolution was moved, and seems to

March 12. 1695. Resolution that he was "guilty" put by him as Speaker from the Chair, and carried.

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have passed without much discussion, "That Sir John Trevor, Speaker of this House, receiving a gratuity of 1000 guineas from the City of London after the passing of the Orphans' Bill, is guilty of a high crime and misdemeanor." The Speaker was subjected to the unparalleled humiliation of putting the resolution from the Chair, — of declaring that the "ayes" had it, — and of adding, that it was carried *nemine dissentiente.**

His letter to the clerk of the House of Commons excusing his absence.

The House immediately adjourned, and the last act which Trevor did as Speaker was to sign the "Votes" containing this resolution, which appeared in print next day. That he might escape the additional disgrace of putting the motion for his own expulsion, he forthwith sent a letter to the Clerk, which was delivered to him at the table, in these words: "Mr. Jodrell; I desire you to present the inclosed to the House; and in that you will oblige, Sir, your servant, J. Trevor, Speaker. March 13. 1694." The Clerk then read the inclosure to the House: "Gentlemen; I did intend to have waited upon you this morning; but, after I was up, I was taken suddenly ill with a violent colick; I hope to be in condition of attending you to-morrow morning: in the mean time, I desire you will be pleased to excuse my attendance. I am, with all duty, Gentlemen, your most obedient humble servant, J. Trevor, Speaker. March 13. 1694." †

After the reading of these letters a scene of much confusion arose. Some proposed that they should forthwith proceed to the choice of a new Speaker, but an objection was taken, that this could not be done without the authority of

* Trevor's Life of William III. ii. 250.; Com. Journ. 1694-95.; 5 Parl. Hist. 906. "On receiving and debating this report, therefore, the Speaker himself, in virtue of his office, was exposed to all the shame and confusion of face which a man could bear and live, in putting the following question, viz., &c. And so much grace did he discover upon the occasion, that he chose to abdicate rather than be deposed." — *Ralph*, ii. 547. "He was forced or yielded to put the question upon himself, 'As many as are opinion that Sir John Trevor is guilty, &c.;' and in declaring the sense of the House, declared himself guilty. The House rose, and he went his way and came there no more." — *North's Life of Guilford*, ii. 28, 29. A curious difficulty might have arisen if, continuing Speaker, a motion had been made for his expulsion; for the instant the motion was carried, he ceased to be Speaker or a member, although perhaps the resolution would not have had full operation till announced from the Chair. Then he must have been turned out of the House, or taken into custody as "*a stranger*."

† This is old style.

the Crown, and that Sir John Trevor still detaining the mace, no motion could be made, and no debate could proceed, till it was brought and laid under the table. Precedents were looked for; but none in point could be found. This irregular conversation having gone on for about two hours, the House adjourned till the following morning at ten o'clock.

All the members in London having then assembled, the Serjeant brought the mace, and laid it under the table, and delivered to the Clerk the following letter from Sir John Trevor, which was immediately read to the House: "Mr. Jodrell; My illness still continues, which makes me unable to come abroad; wherewith I desire you to acquaint the House, and that I humbly pray they will please to excuse me for not attending them. I am, your friend and servant, J. TREVOR, Speaker. March 14. 1694."

He resigns the Chair.

But he had intimated to the King his wish to resign the Chair, and Mr. Wharton, the comptroller of the household, now said, "he was commanded by his Majesty to inform the House that the late Speaker, Sir John Trevor, from indisposition, could not further attend the service of the House; and that his Majesty gave leave to the House to proceed to the choice of a new Speaker." He accordingly proposed Sir Thomas Littleton, but the House, by a majority of 179 to 146, elected Mr. Foley, who had been chairman of the committee of inquiry. *

March 16. He is expelled the House.

As soon as the new Speaker was allowed by the Crown, and business could recommence, a motion was made, that "Sir John Trevor, late Speaker of this House, being guilty of a high crime and misdemeanour, by receiving a gratuity of 1000 guineas from the City of London after passing the Orphans' Bill, be expelled the House," which was carried without opposition, and a new writ was issued for the election of a burgess for the borough he had represented.

Strange to say, not only no further proceedings were taken against him to punish him for the bribery of which he had been guilty, or to make him refund the bribe, but he

* 3 Burnet, O. T. 199.

He is allowed to continue Master of the Rolls.

was permitted to retain his high judicial office of Master of the Rolls—taking precedence of the Lord Chief Justice of the Common Pleas and the Lord Chief Baron of the Exchequer—and to administer justice in the Court of Chancery, after his expulsion from the House of Commons—for the long period of two-and-twenty years,—under Lord Chancellor Somers, Lord Keeper Wright, Lord Chancellor Cowper, Lord Chancellor Harcourt, and Lord Chancellor Cowper again.*

His offence could not have been regarded by his contemporaries by any means in the same serious light in which we should regard it. Even in the resolution of the House of Commons, the *bribe* is tenderly designated "a gratuity;" and, in those times, although judicial corruption would have been strongly reprobated, yet to give or to receive money for voting in parliament was only called "the way of the world." The sin was reckoned to be in the discovery,—not in the act.†

A skilful Equity Judge.

Trevor never was accused or suspected of taking bribes from the suitors in his Court, and he was not only an upright but an enlightened Judge.‡ Being now free from political distraction he devoted himself to the business of his Court, and having much more experience than any of the holders of the Great Seal who were placed over him, he pronounced

* "Whether the members thought that the being so basted in the Chair was punishment enough, or for his taking such gross correction so patiently and so conformably, or else, a matter once out of the way, was thought of no more, it is certain that he never was molested further about that matter, but continued in his post of Master of the Rolls, equitable Judge of the subjects' interests and estates, to the great encouragement of prudent bribery for ever after."—*North's Life of Guilford*, ii. 29.

Sir Edward Turner guilty of bribery while Speaker; afterwards Solicitor-General and Chief Baron of the Exchequer.

† "Corrumpere et corrumpi seculum vocatur." Roger North thus slurs over a bribe taken by Sir Edward Turner, another Speaker, in the reign of Charles II. "This gentleman had served long as Speaker of the parliament, and had been useful to the Crown and also to himself. But on the discovery of *a small present* made to him by the East India Company, he was blown in the House of Commons. The anti-court party took all advantages against the Court, and made a mountain of this mouse; for it was but a trifle. However, it cost him much of his credit and authority in the Chair which he used to have; and he thought fit to give way, and not to sit there longer to be exposed to the affronts which would continually be thrown at him." However, he was made Solicitor-General, and afterwards Lord Chief Baron of the Exchequer.—*Life of Guilford*, i. 97.

‡ He has been absurdly blamed for hearing cases at his private house,—a practice which all Equity Judges must occasionally follow. He had a villa at Knightsbridge, then considered almost a day's journey from London, now forming a division of Belgravia.

many decrees which to this day are considered of high authority. He first laid down the doctrine, that marriage and the birth of a child shall revoke a will,—or, rather, that a will of an unmarried person is made subject to the implied condition, that under such a new state of circumstances it shall not stand good.

The following anecdote shows the weight of his authority in the Court of Chancery. Lord Harcourt having expressed an opinion, that certain process issued against a wife during her husband's absence abroad was irregular; but being met by an observation from counsel which staggered him, said, "he would ask the Master of the Rolls and be guided by his opinion." Trevor, coming into Court, declared the process to be regular, and so it was ruled to be.—Lord Harcourt did not venture to reverse any of his decrees, and on one occasion set an example which might be usefully followed by "affirming Chancellors;"—coming back to Court from attending a Council, and finding the Master of the Rolls, who had been sitting for him, in the act of giving a judgment, he said, "I am of the same opinion—to prevent a re-hearing before myself."*

He in vain tries again to get into parliament.

On the dissolution of the parliament after his expulsion, he had the hardihood to propose to be again returned as a representative of the people; but, says Somers, writing to Shrewsbury, "The King said he had in a manner commanded the Master of the Rolls not to come into the House of Commons, on purpose to prevent the inconvenience the reviving that matter would occasion."†

Retires into private life.

He lived ever afterwards very privately, and found his chief delight in accumulating money. He became so great an economist, that he even grudged a glass of wine to a poor relation. It is recorded of him, that "he had dined by himself one day at the Rolls, and was drinking his wine quietly, when his cousin, Roderic Lloyd, was unexpectedly introduced to him from a side door: "You rascal," said his Honour to the servant, "and you have brought my cousin, Roderic Lloyd, Esquire, Prothonotary of North Wales, Marshal to Baron Price, &c., &c., &c., up my *back stairs*. Take my

How he cheated his cousin out of a glass of wine.

* See Vernon, vol. ii.; Peere Williams, vol. i.; Mod. vol. vi. vii xi.
† Shrewsbury Correspondence, 1695.

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cousin, Roderic Lloyd, Esquire, Prothonotary of North Wales, Marshal to Baron Price, &c., &c., &c.; take him instantly back down my *back stairs* and bring him up my *front stairs*." Roderic in vain remonstrated, and while he was conveyed down the back stairs, and up the front stairs, the bottle and glasses were removed by his Honour,—some law books and papers taking their place.*

Rescues his cousin from the coal-hole.

On another occasion he behaved kindly to this same cousin, having an opportunity of doing so without incurring any expense. "Roderic was returning rather elevated from his club one night, and ran against the pump in Chancery Lane. Conceiving somebody had struck him, he drew, and made a lunge at the pump. The sword entered the spout, and the pump, being crazy, fell down. Roderic concluded he had killed his man; left his sword in the pump, and retreated to his old friend's house at the Rolls. There he was concealed by the servants for the night. In the morning his Honour, having heard the story, came himself to deliver him from his consternation and confinement in the coal-hole." †

Saying of Archbishop Tillotson to him.

I find only one political anecdote of him after his retirement. He was so incensed by the promotion to the primacy of Tillotson, whom he considered a low-churchman, that passing him one day near the House of Lords, he could not refrain from muttering, loud enough to be heard by the object of his spleen, "I hate a fanatic in lawn sleeves." "And I," retorted the Primate, "hate a knave in any sleeves." ‡

Sir John Trevor, being near eighty years of age, at last died, on the 20th of May, 1717, at his house in Chancery Lane, and was buried in the Rolls Chapel. §

Jests upon his squinting.

The unfortunate obliquity of his vision is perceptible in the portraits and prints we have of him, and made the wags assert that "Justice was blind, but at the Rolls Equity was now seen to squint." While in the Chair, as Speaker,

* Yorke's Royal Tribes, 108, 109.

† Ibid. 109; Noble's Granger, i. 172.

‡ Life of Jeffreys, 329. n.

§ He was succeeded by Sir Joseph Jekyll,

—— "that good old Whig
Who never chang'd his principles or wig."

two members in different parts of the House were often equally confident of having "*caught his eye.*"

His character.

He is said to have been rough to the bar, and to have caused great consternation in those on whom he frowned, the effect of his squinting being aggravated by a dark truculent visage, and a tremendous pair of bushy eyebrows. His enemies even alleged that he uttered something so harsh to a very promising nephew of his own, practising before him, as to cause the young man's death from vexation. But, recollecting the factious times in which he lived, and the triumph which his enemies gained over him, we should receive with great suspicion every statement to his disadvantage which is not supported by positive proof. With all his faults, we must admire the energy, enterprise, and perseverance which, under so many disadvantages, raised him from being a barrister's clerk to the highest offices of the state, and which, with a little more luck, might have given him a respectable name in English history. I have pleasure in recording of him, that he discovered the merit of Atterbury, and appointed him Preacher at the Rolls.*

His descendants.

By the death of his elder brother he succeeded to the paternal estates at Brynkinalt, which, with large possessions of his own acquisition, have descended, through a female, to the present Viscount Dungannon, the very honourable representative of his family.†

* The Jacobite divine naturally had a high opinion of his patron, who treated him with great familiarity. Writing to Bishop Trelawny in 1704, he says: "The Master of the Rolls drank the healths of your Lordship and of the whole family quite through to me on Sunday."—*Atterbury Correspondence by Nicholls.*

† See Collins's *Peerage*—"Trevor," "Dungannon," "Hampden."

## CHAPTER CVI.

LIFE OF LORD SOMERS *, FROM HIS BIRTH TILL THE REVOLUTION.

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Pleasure and difficulty in the task of writing the Life of Somers.

It is most consolatory to me at last to reach a Chancellor eminent as a lawyer, a statesman, and a man of letters — the whole of whose public career and character I can conscientiously praise — and whose private life, embellished by many virtues, could not have been liable to any grave imputation, since it has received the unqualified approbation of Addison.† But my pleasure is chastised by considering the difficulty of the task on which I enter. While we so often see men eager for notoriety and present applause, Lord Somers acted on the maxim which he took for his motto,—"PRODESSE QUAM CONSPICI." He has left us no memoir of himself, and he was so careless about his speeches and his writings, that there are hardly the means of fairly appreciating him as an orator, or as an author. He has had a great share of general reputation as a consummate Judge, and as the chief founder of the constitutional monarchy under which the country has flourished above a century and a half; but no biographer has yet appeared who can be said to have done him justice.‡

* In all the entries respecting Lord Somers in the books of the Middle Temple till he was called to the Bench in 1689, his name is spelt Somer, and then Somers.—He himself afterwards sometimes wrote his name SOMMERS, and generally SOM̃ERS, with a circumflex; but I adhere to that which must now be considered the historical orthography, SOMERS.

† Freeholder, No. XXXIX., Friday, May 4. 1716.

Former Lives of Somers.

‡ The author of "The Life of Lord Somers,"—published in 1716, soon after his death, and the foundation of the subsequent Lives of him,—was so grossly ignorant and incurious as to avow that he could not tell at which university his hero had studied; and the "Essay on the Life and Character of Lord Somers," by Cooksey, his kinsman, supposed to contain the most authentic account of his early career, states that he was entered a student of the Middle Temple in 1676, which was the year he was called to the bar, after having been entered there above seven years. There is much valuable information to be found in a Life of Lord Somers by a most learned and honourable man, the late HENRY MADDOCK, Esq., the First Part of which was published in 4to. in the year of 1812, and the Second Part of which I have been permitted to peruse in MS.; but the personal narrative is overlaid by general disquisitions on politics and law. The very erudite author would have had much more success if he had borne in mind the

From long neglect several important parts of his career must for ever remain obscure; few personal anecdotes of him are preserved; and materials for his Life must be sought in College Registers, County Chronicles, Peerages, Parliamentary Debates, State Trials, Equity Reports, Party pamphlets, doggerel verses, such scandalous publications at home as Mrs. Manley's "New Atalantis," and such scarce foreign books as Bonaventuri's "Life of Vincenzio Filicaja." Let me then bespeak the indulgence of the reader for an attempt which I deeply feel must be unworthy of its object.

His family.

Lord Somers, although the architect of his own fortune, was by no means "sprung from the dregs of the people," as it suited his vituperators to represent.* His family had long been owners of a small estate in the parish of Severn Stoke, in the county of Gloucester.† They had likewise another possession, the site of a dissolved nunnery, called "the White Ladies," a short distance beyond the walls of the city of Worcester. After the expulsion of the nuns, the dormitory remained entire, and the old hall and refectory had been fitted up into a modern mansion. This property had been granted to the Somers's at the Reformation, and here they received Queen Elizabeth in her progress through Worcestershire, in the year 1585; the bed in which she slept, and the cup from which she drank, being preserved by them as precious reliques, even when they took to the republican side.

caution to biographers by Cornelius Nepos in the commencement of the "Life of Pelopidas:"—"Vereor, ne, si res explicare incipiam, non vitam ejus enarrare, sed historiam videar scribere."

* Examiner, No. 26. by Swift; New Atalantis, iv. 62.

† Of this family was the famous Admiral Sir George Somer, one of the discoverers of the *Bermudas*, or "*Somer* Islands," celebrated by Waller for their beauty when explored, though long shunned for their supposed dangers and enchantments.

> "Heaven sure has kept that charming spot uncurst
> To show how well things were created first."

The old mariner's answer to King James, when persecuted for refusing to yield to the wishes of the Court, seems to show that the feeling of independence was very strong in the blood of the Somers: "I wish that as I am the first, so I may be the last of sacrifices in your times. When from private appetite it is resolved that a creature shall be sacrificed, it is easy to pick up sticks enough from any thicket whither it hath strayed to make a fire to offer it with."—Life of Bacon, prefixed to folio Edition of his Works, p. 22.

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His father.

The Chancellor's father, John Somers, to increase his patrimonial fortune, was bred to the law, and was established in practice as the most eminent attorney in the county of Worcester, when the civil war broke out. Although the city and the chief part of the county of Worcester supported the royal cause, he sided with the parliament, raised a troop of horse, and served under Cromwell. He was for some time quartered at Upton, near his estate, and while he lay there used to frequent the parish church of Severn-Stoke. The clergyman, an intrepid supporter of divine right and passive obedience, though often warned against "politics in the pulpit," could not forbear from introducing in his sermons violent invectives against the opposite party. To cure him effectually of this propensity, Captain Somers, in the transport of one of these furious harangues, fired a pistol over his head, and lodged a ball in the sounding board, the mark of which is shown, and the history of it related, by the clerk of the parish to this very day.*

Sept. 3. 1651.

The battle of Worcester, Cromwell's "crowning mercy," having crushed the royal cause, and established tranquillity in the country, the captain changed his service, and, supported by John Doe and Richard Roe, prepared for warfare at Westminster. He resumed his profession, and from his great skill in it had *cavaliers* as well as *roundheads* for his clients. A sort of sanctity had been attached by both sides to the Whiteladies, so that it was left uninjured, when all the rest of the suburb to which it belonged, including St. Oswald's Hospital, had been demolished during the sieges which the city had stood.† In this mansion, thus venerated and considered neutral ground, King Charles II. took up his abode prior to the fatal fight; and having shifted himself here after his defeat, while a council of war was held at Burbourne Bridge, he went off in disguise through the fields adjoining the house to Estwood, and thence to Bascobel, leaving

"The White Ladies."

* Cooksey, p. 7.

† In a MS. of Mr. Townshend of Elemley House, who was in the city during the first siege and kept a regular diary, under the date of 26th March, 1646, there is this entry: "The citizens and soldiers in the town destroyed St. Oswald's Hospital, but spared Mr. Somers's house at the Whiteladies, which was a strong stone building, capable of holding 500 men with safety."—Nash. Hist. Worcestershire, ii. 97.

behind him his garters, two pairs of fine fringed gloves, a waistcoat and a pair of trunk hose,—which were afterwards added by the family to the memorials of Queen Elizabeth.

Birth of the Chancellor.

John Somers, the father, had been married in the year 1649, to Catherine Ceavern, of a respectable family in Shropshire, and she had brought him a daughter, Elizabeth, afterwards Lady Jekyll. She was now again pregnant, and he placed her for safety in the sanctuary at Whiteladies, not many days after Charles had left it. Here, in the spring of the following year, she gave birth to John, the future Chancellor. From the disturbed state of the country no register is to be discovered of the baptism of these two children, and the exact day of the birth of either of them has not been ascertained.*

Prodigy foretelling his greatness.

I find no farther notice of the boy till a prodigy announced his future greatness. He was much under the care of an aunt married to a noted presbyterian of the name of Blurton, and "the good lady walking with him in her hand amongst her poultry, a beautiful roost-cock flew upon his curly head, and while perched there crowed three times very loudly."†

His school education.

However, there long seemed to be no prospect of his ever rising higher than being, like his father, an eminent country solicitor. He was put to the college school at Worcester, the master of which then was Dr. Bright, a distinguished classical scholar and a very skilful teacher. Such a practical love of communicating knowledge had this meritorious man, that after he was a prebendary of the cathedral, and proprietor of a considerable landed estate, he continued with unwearied assiduity and patience to ply his pedagogical labours. From him young Somers imbibed that taste for elegant literature which adhered to him through life. At this seminary we know that he was thoroughly grounded in Greek and Latin, but how long he continued there is uncertain, and there is

* Some accounts state the 4th of March as the Chancellor's birthday, but without any authority cited. Mary and Catherine, the two younger daughters, are regularly registered in St. Michael's parish, in the city of Worcester.

† Cooksey, a relation of the family, says, "This tradition comes well attested to me from the Rev. Mr. Pixall, who derived it from his grandmother, who lived at the time in intimacy with the family, and had no doubt of the fact," p. 10.

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great difficulty in tracing him during his early youth. He appears to have been put for a short time to a private academy at Walsall, in Staffordshire, and to another at Sheriff-Hales, in Shropshire.* He was always remarkably studious and contemplative. "Though the brightest boy in the College School, instead of joining his young companions in their boyish amusements, he was seen walking and musing alone, not so much as looking on while they were at play." †

His biographers represent that as soon as his school education was finished, he was placed in his father's office to learn the business of an attorney, and they defer his first entrance at the University till the year 1675, when he was in the twenty-fifth year of his age; but although he certainly did reside at Oxford at the time they suppose, I have ascertained that, in the year 1667, when he was only sixteen years old, he was matriculated and admitted of Trinity College. ‡

He is admitted of Trinity College, Oxford.

The records of the University have been searched in vain to discover any other notice respecting him. I am inclined to believe that his residence at Oxford at this period of his life was extremely short, and that while still very young he did become an apprentice in the manner supposed, with the view of being his father's partner and successor. A few years after we find him occupying a desk in the office at Whiteladies. The drudgery to which he was there expected to submit, did not by any means suit his taste, and he soon made it apparent that he never would succeed in this department of the profession. However, idleness could never be imputed to him; nor did he now cross his father's soul by penning a stanza when he should engross, for it was not till some years after that, initiated by the young Earl of Shrewsbury, by whose introduction he afterwards drank champagne with the wits, he first displayed his poetical vein. At this period

Clerk to his father.

His disinclination to this drudgery.

* Buck's MSS. Brit. Mus. No. 4223. † Seward's Anecdotes, ii. 114.

‡ Copy of Matriculation: — "Mar. 23. 1667. Johannes Somers an. n. 16. fil. Joh. Somers de Worcester Genri."

Copy of admission in his own handwriting: — "Ego Johannes Somers, Filius Johannis Somers generosi in civitate Vigorniæ natus, admissus sum commensalis 3 mensæ in Col. Trin: Oxon: sub tutamine Mag[ri] Campion, 1667." Then follow these words in another hand: "Termino Paschalis. Tandem Summus Angliæ Cancellarius." His biographers have been misled by the entry of another John Somers, in 1674, who is described "of the city of Exeter."

he devoted himself to severe study, insomuch that, "by the exactness of his knowledge and behaviour, he discouraged his father and all the young men that knew him; they were afraid to be in his company." *

His love of study.

He was sometimes allowed to retire to the family house in the parish of Severn Stoke, and the room which he occupied, and in which he read night and day, used afterwards, when he became a great man, to be pointed out as "Somers's study." But he chiefly resided at Whiteladies, the society of which he was not sorry to exchange for his books. A scheme of life prevailed there of a very extraordinary description. Somers, the father, having at the Restoration obtained a pardon under the Great Seal (which is still preserved in the family), and continuing to flourish in his profession, had his office established in the old Nunnery.† The mansion was inhabited by several other families connected by blood and marriage, and they consorted in a style of which it is now difficult to give or to form an idea.* "Their mornings were employed by each in their respective occupations — the culture of a large farm — the clothing trade, then in a flourishing state — the producing and manufacturing teasels, woad, madder, and all dyeing materials — the making of bricks and tiles in immense quantities, to supply the demand occasioned by rebuilding the ruined city and suburbs. ‡ The labours of the day over, they repaired for refreshment to one common table in the great hall of the old Nunnery, where seldom fewer than twenty or thirty relations and friends of the families assembled daily, and spent their evenings in the utmost cheerfulness and conviviality. The products of the farm, the supplies of fish and game, and viands of every kind received constantly from their country connections, furnished their table with abundant plenty, and

Mode of life at White-ladies.

* Seward's Anecdotes, vol. ii. 114.; Buck's MSS. Brit. Mus. No. 4223.

† He is not supposed to have committed any offence requiring a special pardon beyond firing over the head of the parson at Severn Stoke while in the pulpit; but being a lawyer, he perhaps remembered the observation of Sir Edward Coke, "that good men will never refuse God and the King's pardon, because every man doth often offend both of them." 3 Inst. C. 105.

‡ From which Lord Somers was afterwards, in abusive ballads, called *the Brickmaker's Son.*

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entitled such contributors to a place at it without ceremony or reserve. The annual slaughter of two brawns marked the festivity of Christmas." *

Old Somers managed the parliamentary elections for the County, for the City, and for the boroughs of Evesham, Droitwich, and Bewdley. To Whiteladies came the candidates and representatives to consult him and plan their electioneering operations, and to Whiteladies were summoned the leading electors to receive a good dinner and promises of preferment.

*Sir Francis Winnington.*

The most distinguished individual in the group for some years was the great lawyer Sir Francis Winnington, afterwards Solicitor General, who was now rising rapidly at the bar, and represented the city of Worcester in parliament.† He saw the merit of young Somers, and recommended that he should study for the bar, pointing out how Littleton and other Worcestershire men had risen to be Judges. The wary attorney was very averse to such a hazardous experiment, particularly as he had no younger son to inherit the fine business which he had established; but at last he yielded, and on the 24th of May, 1669, the future Chancellor was carried to London, and entered a student of the Middle Temple.‡ This ceremony being gone through, he immediately returned into the country, and read law privately in his father's house, under the direction of Winnington, till the spring of the following year. A small set of chambers was then bought for him in Elm Court, in the

*Advises Somers to go to the bar.*

*Somers entered of the Middle Temple.*

* Cooksey, 14.

† "But how at church and bar all gape and stretch,
If Winnington but plead, or South or Only preach."
*Dispensary*, canto v.

But by all prose accounts, although Sir Francis was a deep jurisconsult, he was a very indifferent orator. In 1674 he was made Solicitor General. Orig. Jur. 119.

‡ By the kindness of the benchers and the sub-treasurer of the Middle Temple, I have been able to ascertain this date; and I subjoin a copy of his admission from the books of the Society.

Maij 24to. 1669o.

| | | |
|---|---|---|
| Somer J. adh. | Mr. Johes Somer filius et heres apparens Johis Somer de pochia Scti Michis in Bedwerdine in Com. Worcestr'. gen. Admissus est in Societatem Medij Templi spealiter. Et obligatur una cum. Et dat ℘ fine - - - - | 03 . 10 . 00 |

Temple, and he began to keep his terms.* He had now "the run of his friend's chambers," and he was there so constantly to see and to assist in the business which was going forward, that some said "he began the law by being the clerk of Sir Francis Winnington†;" but, in truth, he was only his pupil. The "Readings" and "Moots" by which the study of the law had been carried on since the establishment of the Inns of Court were falling into desuetude, the "Exercises" by which proficiency was tested were now becoming empty forms, such as we find them, and the system of pupillage was beginning. This has since very imperfectly supplied the place of the training for the profession in England which prevails elsewhere under regular professors appointed to teach the law of nations, the civil law, the different branches of the municipal law, and medical jurisprudence,—with examinations and theses, to show that the aspirant is fit to be trusted with the duties of an advocate, and is qualified to fill the offices to which, as an advocate, he may be appointed.‡

He studies the law under Sir Francis Winnington.

As yet young Somers, while in London, associated only with lawyers, his chief companion being Jekyll, afterwards his brother-in-law—the "good old Whig," Sir Joseph, celebrated by Pope. His vacations he spent at Whiteladies, where the society was very little relished by him—till the year 1672, when it was enlivened by a gay and gallant young courtier, who was not only an accomplished scholar, but was

He contracts a friendship with the young Earl of Shrewsbury.

* Februarij 26to. 1669o.

Somer J. ad Ca. Ex Assignacone et sursum reddicone Executor: ultime voluntat et Testamenti Thome Connesby gen. nup. defunct. Mr. Johes Somer Admissus est in totam illam Cameram cum prtimentij et Scituat ex Australi parte de le Elm Coer quarti gradus Habend. totam illam Cameram prdict cum prtinentij et prdict mro Somer pr termino vite ipsus Johis. Et dat ꝑ fine - - } 02.00.00

Chambers, Elm Court.

† Life of Lord Somers, 8vo. 1716, p. 10.

‡ The bencher who, according to the present system, "publishes a barrister" in the hall, in token of his proficiency, may appropriately address him in the words of Horace:

"Lusisti satis, *edisti satis* atque bibisti,
Tempus abire tibi est."

However, I am happy to say that there are now in the Inns of Court symptoms of improvement.

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familiarly acquainted with the leaders on both sides in politics, and with the intrigues of fashionable life. Somers, the attorney, along with the estates of other great families, had managed those of the Earls of Shrewsbury. The head of this illustrious house had been killed some years before in a duel with the Duke of Buckingham, — his countess, as it was said, disguised as a page, holding the Duke's horse, and rewarding his prowess by sleeping with him in the shirt stained with her husband's blood.* The young Earl, after being much courted by Charles II., had met with some disgust from the monarch or his ministers, and, still in early youth, resolved to retire into the country. Grafton, then the chief residence of the family, being found much out of repair, he accepted an invitation from his steward to Whiteladies. It was vacation-time, and young John, the student of the Middle Temple, was an inmate. At once a friendship was contracted between them which lasted through life, unabated even by some deviation of the Earl, when become Duke of Shrewsbury, from the political principles which they long held in common. They now engaged in the same studies and amusements, and for months were inseparable. Somers from this time visibly changed his manners, and acquired that "exquisite taste of politeness" for which, as well as "the greatest strength of good sense," he was afterwards celebrated.† There is however a suspicion that his morals underwent a change, not so favourable, about the same time, and (with what foundation I do not certainly know, perhaps only from political spite) libertinism was afterwards imputed to him.

He is introduced to poets and statesmen.

Upon their return to London they still lived much together, and Shrewsbury introduced his friend as well to Dryden and other distinguished men of letters as to the nobility residing

* —— " How chang'd from him
That life of humour and that soul of whim ;
Gallant and gay in Cliefden's proud alcove,
*The bower of wanton Shrewsbury and love.*"

† Freeholder, No. 39. Ralph, ii. 785. He seems to have accomplished the union which Pliny thought so difficult and important: "Severitatem istam pari jucunditate condire, summæque gravitati tantum comitatis adjungere, non minùs difficile quàm magnum est." Plin. Ep. Lib. iv. Ep. 3.

in Queen Street, in Lincoln's Inn Fields, and in Aldersgate Street. Somers now felt the disadvantages of a defective education, which must have arisen either from a very short stay at the University, or from idleness while resident there. Suspending professional pursuits, and sacrificing professional gains, he nobly resolved yet to go through a regular course of academical discipline. He was confirmed in this purpose by the advice of Dr. William Hopkins, a very learned man, Prebendary of the Cathedral, and Master of St. Oswald's Hospital at Worcester. Accordingly, in the year 1674, when he was in his twenty-fourth year, he returned to his College and established himself there, but still contriving to keep his terms at the Middle Temple, and spending his vacations at Whiteladies. "As a member of Trinity College," says Cooksey, "he lived as other students lived; his exercises, of which I have seen some, are no wise remarkable; and I find there nothing recorded of him, or worthy to be recorded, except an entry in the Bursar's book of the year 1675, the year after he entered, of his giving them five pounds towards the repair of the chapel, which I should not mention but as a proof of the liberality with which his father supported him there, few students being in those times enabled to spare a donation, small as this may seem, out of the usual allowance to young men of his rank."*

**He returns to Oxford, and resides there some years.**

But though he does not appear, either at school or the University, to have composed any thing which might have prognosticated his future eminence, his character, even at this early age, was such as to inspire no common respect. His father, we are told, used to visit London during the terms, the system of agency between country and London attorneys not then being established, and, on his way, he usually left his horse at the George Inn at Acton, where he often mentioned "his hopeful son at the Temple." The landlord one day, in reply to these panegyrics, said, "Why don't you let us see him, sir?" Mr. Somers, in consequence, requested his son to accompany him as far as Acton, on his

**Anecdote to show his father's admiration of him.**

* Cooksey, 24. In 1682 he contributed a farther donation of 100*l.* for the same purpose.

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return home; but on his arrival at the George, taking the landlord aside, said, "I have brought him, Cobbett, but you must not talk to him as you do to me; he will not suffer such fellows as you in his company." *

He is called to the bar.

On the 5th of May, 1676, when he was of seven years' standing as a student of law, the period then regularly required, he was called to the bar †, and in the following year he was admitted to a larger set of chambers in Pump Court ‡, but he did not begin to lay himself out for practice for five years after; still making Oxford his principal place of abode during all this time, though he occasionally visited London and Worcester. He thus became a ripe and good scholar as well as lawyer, and, regard being had to his acquaintance with modern languages and literature, perhaps the most accomplished man that ever rose to high eminence in the profession of the law in England. Having mastered the common law under Winnington, he now devoted himself to the civil law, and acquired a knowledge of it, which is very unusual among English barristers, and which he found to be of the most essential service to him in his subsequent career. The French writers had come into great vogue soon after the Restoration, and being familiar with them, he was only on a footing with those whom he met in good society; but although Italian was now much less known in England than it had been in the reign of Elizabeth, he acquired a critical knowledge of that noble dialect, and he perused and re-perused all the great poets, as well as prose writers, who composed in it from Petrarca to his own contemporary Filicajo,

His proficiency in the civil law.

He becomes master of modern languages.

* Life of Lord Somers, 1716, p. 11.

† Ad Parliament. tent. 5° die Maij, 1676°.

Barristers called. Mr. Somer J. Hetherington H. Leach J. Freke J. Barton C. and Broughton P., are called to the Degree of the utter barr. Mr. Davys M., Plouden F. and Dobbins R. are likewise of grace and favour called to the same Degree.

‡ Julij 10mo. 1677°.

Somer J. ad Ca. Mr. Johes Somer de le Utter barr admissus est in totam illam Cameram cum ptinentijs Mri Samuelis Kecke de le Utter barr scituat in passagio inter le Pumpe Cort. et Wine Cort. primi gradus. Ac in loco et vice dci Mri. Kecke J. qui eandem ea intencone sursum reddidit et dat ℘ fine. } 02.00.00

whom he justly considered the greatest genius Italy had produced since the author of "GERUSALEMME LIBERATA."* CHAP. CVI.

He joins the Whigs.

He began now likewise to take a very active part in politics. He had been introduced in London to Shaftesbury, Lord Russell, Sydney, Sir William Jones, and all the eminent Whigs, and contrary to his interest,—upon conviction, he eagerly joined them. He ever remained true to his principles, and from his enlightened views, his great talents, and his unsullied integrity, he is to be considered the greatest ornament of the Whig party. But let those who embrace the common notion in England that a gentleman having merely gone through the common routine of education at school and college, and having afterwards spent his life in rural amusements, in reading the newspapers, and occasionally attending parliament, is qualified at any time to fill a high office under the crown, and to act as a consummate statesman, remember that this was not the way in which Somers learned how to rescue a nation from tyranny, to bring about a revolution without bloodshed, and nicely to balance the antagonist forces of a constitutional monarchy.

His attention to political science.

He studied politics as a science. Making himself master of the history and antiquities of his own country, and collecting and reading all that had been published on both sides during the memorable struggle between the King and the Parliament, which terminated before his birth, but of which he had heard so much from his father, he applied himself diligently to the civil history of other countries, ancient and modern; and he attentively pondered all that had been written on constitutions and the art of government, from Aristotle to Hobbes.

He practises English composition.

Knowing that without the habit of composition little eminence can be acquired in speaking or in thinking, he from time to time wrote essays and treatises, several of which he gave to the world,—not out of vanity,—but to enlighten the public mind. He is said first to have appeared in print as reporter of "The memorable case of Denzil Onslow, Esq., tried at

* We shall see hereafter that this admiration was reciprocal, and that Somers was celebrated by Filicajo (among other things) for being able to speak seven languages without having ever been out of England.

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the assizes in Surrey, touching his election at Haslemere, wherein is much good matter touching the due ordering of elections for Parliament." *

He reports the case of the Haslemere election.

The next work in which Somers engaged was of far more importance, and gave him full opportunity to display his constitutional learning and his logical method of reasoning. It arose out of the famous "Exclusion Bill," and was undertaken at the request of Lord Shaftesbury. The lovers of absolute prerogative, and the adherents of the Church of Rome, eager that James should succeed on a demise of the crown, denied the power of parliament to change the succession, which they contended was regulated entirely by the law of God. The object of the Whigs was to establish the authority of parliament to limit, restrain, or qualify the right to the succession — which no temperate inquirer into our constitutional history could venture to deny, and which has not only been repeatedly acted upon, but is also expressly recognised and confirmed by statute.† The tract came out opportunely while the Bill to set aside the Duke of York was pending. The title of it was "A History of the Succession, collected out of the Records and the most authentic Historians." ‡ It was well received, and made many converts, as it presented a clear exposition of the principles by which the succession to the crown had been governed from the earliest times — with striking historical illustrations to enforce the doctrine which was inculcated. However, the unconstitutional expedient dexterously proposed of suspending or abridging the prerogatives of a Popish successor, was generally preferred to the entire exclusion of the right heir, and the nation became alarmed and disgusted by Shaftesbury's mad scheme of setting up the legitimacy of the Duke of Monmouth.

His pamphlet on the "Exclusion Bill."

His defence of the two last Parlia-

After the breaking of the Oxford Parliament, which gave such a complete triumph to the Court, there was issued a royal

* Somers's Tracts, vol. i. 374. Lord Glenbervie's Election Cases, vol. i. 341. This Report was quoted and much relied upon in a recent case in the Common Pleas, in which that Court held that it is legal to purchase a small freehold for the express purpose of acquiring a vote in a county, and that no valid objection can be made to a vote so acquired.

† 13 Eliz. c. 1., and Anne, c. 7.

‡ Somers's Tracts, vol. xvi. 167.

"Declaration," framed by Lord Chief Justice North, in explanation of the causes which had led to the two last dissolutions, — inveighing in bitter terms against those who had opposed the government, and had advocated the "Exclusion Bill." *

ments in the reign of Charles II.

This was answered by a Tract intitled "A just and modest vindication of the two last Parliaments," which was at first ascribed to Sir William Jones. Burnet says that Sydney contributed to it; but there is now no doubt that it was chiefly composed by Somers.† It is a very masterly vindication of the rights of parliament, and of the policy of the liberal party under Shaftesbury in their attempt to alter the succession for the safety of the people, and the preservation of the monarchy. The author certainly goes too far in denying the power of the crown to dissolve parliament at pleasure, although he is fully justified in animadverting on the manner in which this power had been recently exercised.‡ An unfounded charge was brought against the publication that it advocated democracy. Somers was through life a sincere and zealous friend to limited monarchy. On this very occasion he says, "The preservation of every government depends upon an exact adherence unto its principles, and the essential principle of the English monarchy being that well proportioned distribution of powers whereby the law doth at once provide for the greatness of the King and the safety of the people, the government can subsist no longer than whilst the monarch enjoying the power which

* Life of Guilford, *antè*, Vol. III. p. 460.

† Lord Hardwicke mentions that a copy of it in the handwriting of Lord Somers was amongst the MSS. which were destroyed in the fire at the chambers of the Honourable C. Yorke. State Papers, vol. ii. p. 399., and the internal evidence of the authorship is equally strong. The first edition was published 8th April 1681.

‡ Sydney had contended that after the statutes requiring parliaments to be called at least once a year, and oftener if necessary, the Crown was bound to call parliaments annually, and could not evade the law by a dissolution. In a treatise entitled "The Antiquities of the Parliament of England," ascribed to Mr. Justice Dodderidge, it is laid down, that "Parliament ought not to be dissolved until every Petition is answered, and that the King is guilty of perjury if he acts differently." But the "most critical and delicate trust" of dissolving as well as calling parliaments is undoubtedly vested in the Crown, and is indispensably necessary for the preservation of the monarchical branch of the constitution. See Burke's Works, vol. ii. p. 634. 4to. ed.

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the law gives him, is enabled to perform the part which it allows him, and the people are duly protected in their rights and liberties." In reply to the taunt that his party were "lovers of commonwealth principles," he says, "If they mean by those *lovers of commonwealth principles* men passionately devoted to the public good, and to the common service of their country,—who believe that Kings were instituted for the good of the people, and the government ordained for the sake of those that are to be governed, and therefore complain or grieve when it is used to contrary ends, every humane and honest man will be proud to be ranked in that number. To be fond of such principles becomes every Englishman." These are the principles on which, seven years later, the Revolution was conducted, and this is almost the language of the Prince of Orange and the leaders of the Convention Parliament. According to Burnet the pamphlet, though very able, "had no great effect, the spirit of the party being spent;" but it encreased the reputation of Somers as a great constitutional lawyer, and it must have had a salutary influence by explaining the just object of political institutions, and defining the boundaries between the duty of obedience and the right of resistance.

A few months after Somers published another tract, which was very popular on its first appearance, and may now be perused with satisfaction. The attempt to prosecute Lord Shaftesbury for high treason in the City of London having been defeated by the famous "IGNORAMUS," various pamphlets issued from the press, under the patronage of the government, to abuse the grand jury who had returned this verdict. By way of answer, there came out a tract entitled "The Security of Englishmen's Lives; or the Trust, Power, and Duty of Grand Juries of England." This likewise was ascribed to Jones and other Whig leaders. Burnet represents that it passed as written by Lord Essex, though, says he, "I understood afterwards it was written by Somers, who was much esteemed, and often visited by Lord Essex, and writ the best papers that came out in that time." * It

*His tract on the rights of Grand Juries.*

* See North's Examen, p. 508.

contains an able exposition of the advantages of the institution of Grand Juries, condemns the doctrine that they are bound to find a true bill upon any evidence which may be laid before them, and forcibly points out the misconduct of the judges, who, by an examination of witnesses in open court, and by a perversion of the law and facts of the case, had recently striven to have a bill found against an innocent nobleman, on which he would immediately have been capitally convicted before a partial Lord Steward and a packed selection of peers. The author still avowed his attachment to the monarchy, saying:— "The greatness and honour of a prince consist in the virtue, multitude, wealth, and prowess of his people, and his greatest glory is to encourage virtue and piety by the excellence of his government. The King's interest is more concerned in the protection of the innocent than in the punishment of the guilty. The law has not been less careful for the reputation of the subjects of England than for their lives and estates, and this seems to be one reason why, in criminal cases, a man shall not be brought to an open legal trial by a petit jury, till the grand jury have first found the bill. If, for fear of being unworthily reproached as *ignoramus jurymen, obstinate fellows, that obstruct justice and disserve the King*, the grand jury shall suffer the judges or the king's council to prevail with them to indorse *Billa vera*, when their consciences are not satisfied in the truth of the accusation, they act directly against their oaths, oppress the innocent whom they ought to protect,— as far as in them lies, subject their country, themselves and posterity, to arbitrary powers, pervert the administration of justice, and overthrow the government which is instituted for the obtaining of it and subsists by it. Every design of changing the constitution ought to be most warily observed and timely opposed; nor is it only the interest of the people that such fundamentals should be duly guarded, for whose benefit they are at first so carefully laid, and whom the judges are sworn to serve; but of the King too, for whose sake those pretend to act who would subvert them." Thus early did Somers deserve to be described as —

"Form'd 'twixt the people and the Crown to stand,
And hold the scales of right with even hand."

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In the midst of these laborious compositions he sedulously kept up his classical reading. To improve his prose style he was in the habit of diligently translating from the Greek, and he now contributed "the Life of Alcibiades" to a new translation of PLUTARCH. He likewise occasionally amused himself with rhiming. After the instance of Cicero, we cannot say decidedly that he might not have considered himself a great poet, but the probability is that he only sought by his metrical experiments to improve his taste and to unbend his mind. He must have supposed, however, that he had reached some skill in versification as he now published translations from Ovid, of the Epistles of "Dido to Æneas," and "Ariadne to Theseus." He is certainly very inferior to Dryden, his contemporary; and now that every shop boy and milliner's apprentice can write smooth lines of ten syllables, we are astonished to find some of his couplets so uncouth as well as prosaic; but closely following his original he occasionally renders the sense with some felicity. Thus he makes the deserted Tyrian queen reproach in English her ungrateful fugitive:

> "With cruel haste to distant lands you fly,
> You know not whose they are or where they lie.
> On Carthage and its rising walls you frown,
> And shun a sceptre which is now your own.
> But tho' all this succeeded to your mind,
> So true a wife no search could ever find.
> All day Æneas walks before my sight,
> In all my dreams I see him every night;
> But see him still ungrateful as before,
> And such as, if I could, I should abhor.
> But the strong flame burns on against my will,
> I call him false, but love the traitor still."

And thus he represents the deserted Ariadne reproaching the deceitful Theseus:

> "Ah! see this wounded breast worn out with sighs,
> And these faint arms stretched to the seas and skies!
> See these few hairs yet spared by grief and rage,
> Some pity let these flowing tears engage!
> Turn back and if I'm dead when you return,
> Yet lay my ashes in the peaceful urn."

He was praised by political partizans out of hatred to Dryden, who had recently lashed Shaftesbury and the Whigs so successfully in "Absalom and Achitophel," and "the

Medal;" — but had Somers only been a versifier, his name never would have reached us, and his "immortal strains" must soon have perished. We now examine them because we cannot free ourselves from a little curiosity to know how the great lawyer and statesman succeeded in the poetic vein.

Dryden's Satire to his Muse

Shortly after, a great sensation was excited in the town by an anonymous poem, entitled "Dryden's Satire to his Muse," which, if not recommended by flights of fancy and mellifluous numbers, was highly seasoned with ribaldry and scandal. It was universally believed to be Somers's, but he denied it. There is no positive evidence to prove that it was his; and Pope, who ought to have been well acquainted with the literary history of the age immediately preceding his own, said that it was untruly ascribed to him.* The disavowal of such a production does not amount to much; and a comparison of some parts of it with the acknowledged publications of Somers in prose and verse, affords strong evidence in support of his putative authorship. Horace Walpole objects that "the gross ribaldry of it cannot be supposed to have flowed from so humane and polished a nature as Lord Somers†;" but we cannot well judge of the licence which the times might allow to an anonymous political satirist. "The poem," says Johnson, "whosesoever it was, has much virulence and some sprightliness. The writer tells all the ill that he can collect of Dryden and his friends." The personal attack on Dryden, the most pungent part of this satire, is too coarse to be transcribed, and the reader must be contented with an eulogistic character of the Duke of Ormond, who is strongly contrasted with the Tory leaders:

"Barzillai's praise I could rehearse again,
And make the labour of my second pen;
Wise, valiant, loyal, rich, of high descent,
Born t'all that fortune for her darlings meant.
Who nobly scorned a private happiness,
When he beheld the sovereign in distress:

* In the "Life of Dryden," Johnson having said that "both his person and his party were exposed in their turns to the shafts of satire which, though neither so well pointed nor perhaps so well aimed, undoubtedly drew blood," adds, "one of these poems is called 'Dryden's Satire on his Muse;' ascribed, *though as Pope says falsely*, to Somers, who was afterwards Chancellor."

† Works, vol. i. 432.

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To arms he flew, but with bold Cato's fate,
Espoused the cause that fortune seemed to hate.
Striving to save the head that wore the crown,
He pulled the mighty ruin on his own."

Somers likewise practised Latin versification, and, some may think, with more felicity. The following lines from his epitaph on his unmarried sister, who died young, are to be admired both for the rythm and the sentiment:—

"Moribus illa vultuque modesto
Omnes callebat artes
Quæ virginem decebant:
Quid plura? Hic unà jacent
Parentum deliciæ, et decus, et dolor!"

Quære whether Somers author of the "Tale of a Tub?"

He still kept up his intimacy with the Earl of Shrewsbury, and they seemed inseparable whether, in the Metropolis, at Oxford, or at Whiteladies. Cooksey positively asserts that "here, and at this period of their lives, Mr. Somers and his gay young friend amused themselves with sketching, from the life, the characters of PETER, JACK, and MARTIN, and their ludicrous disputes about the fashion of their coats,"— adding, circumstantially, that "Somers's uncle, Blurton, furnished the portraiture of the Church of England man, his grandfather, Somers, a rigid Calvinist, was Jack, and that Peter had his lineaments from Father Petre and the Jesuits, with whom the young Earl was constantly beleaguered." This biographer represents that the two real authors of the "Tale of a Tub" trusted their MS. to Shaftesbury—who showed it to Sir William Temple—from whom it was obtained by Swift, who kept it by him till 1703, and then published it.* I make no doubt that Cooksey is sincere, but, though a relation, he can make no stronger case than "the private tradition of the family," together with certain supposed "internal evidence;" and, although there is no direct proof upon the subject, I think the probabilities are infinitely stronger in favour of the common belief, that the "Tale of a Tub" was Swift's own composition. Johnson sometimes *doubted*, and sometimes entertained a strong belief in the negative. "That Swift was its author," he writes, "though it be universally be-

* Cooksey, p. 18. *et seq.*

lieved, was never owned by himself; but no other claimant can be produced, and he did not deny it when Archbishop Sharpe and the Duchess of Somerset, by showing it to the Queen, debarred him from a bishopric." Again, — "his *Tale of a Tub* has little resemblance to his other pieces. It exhibits a vehemence and rapidity of mind, a copiousness of images and vivacity of diction, such as he afterwards never possessed or never exerted." * And in conversation the great critic observed to Boswell, "I doubt if *the Tale of a Tub* was his; it has so much more thinking, more knowledge, more power, more colour, than any of the works which are indisputably his; if it was his, I shall only say he was *impar sibi*." But Swift's dedication of the piece to Lord Somers when they were on good terms, and their subsequent quarrel without any complaint or reproach of literary theft on either side, seem entirely at variance with Cooksey's story. Sheridan, in his Life of Swift, says that, soon after the publication of the work, a Mr. Waryng, a chamber-fellow of Swift's, declared he had read the first sketch of it in Swift's hand-writing. † Dr. Hawksworth observes, that the Dean corrected an edition of the Tale of a Tub a short time before his understanding was impaired ‡; and Blackmore, imputing the work to Swift, denounces him as "an insolent derider of the worship of his country," while in his ESSAY OF WIT, in praising what he considers excellent, he says, —

> "'Twill SOMERS' scales and Talbot's test abide,
> And with their mark please all the world beside."

The argument, from superiority to acknowledged compositions, weighs much more strongly against Somers and the Earl of Shrewsbury than against Swift, — and Peter, Martin and Jack do not exhibit the peculiarities of individuals seen at Whiteladies, but the characteristics of the three great divisions of Christians. The statement in the "Apology for a Tale of a Tub," that "the greatest part of this work was

* Life of Swift. Tour to Hebrides.
† Sheridan's Life of Swift, p. 6.
‡ Nicoll's edition of Swift, i. p. 5.

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written many years since, when the author was young, his invention at the height, and his reading fresh in his head," supposing it to be serious, would apply to Swift himself as well as to Somers.* But we are quite certain, that the whole work could not have been composed in the lifetime of Lord Shaftesbury; for the incident of "Jack getting on a great horse and eating custard," undoubtedly alludes to Sir Humphry Edwin, Lord Mayor of London, going in state to a Presbyterian meeting-house in the reign of Queen Anne. Dryden is very severely handled in it; but Swift started as a Whig. Upon the whole, I think we may safely conclude, that Somers, notwithstanding the broad assertion of his kinsman, can neither have credit for the wit, nor be made responsible for the coarseness of this extraordinary performance. — The author, whoever he was, is not fairly chargeable with irreligion, and if he had been made a bishop, I doubt not he would ever after have proved an exemplary father of the church.

An anonymous piece of Somers falsely claimed by another.

Other anonymous pieces Somers did write about this time. One of these, a popular poetical effusion, an impudent pretender had the effrontery to claim as his own. This person being introduced to Lord Somers, when Chancellor, and asked by him if he knew who wrote it, "Yes, my Lord," he replied, "'tis a trifle: I did it off hand." At this his Lordship laughed heartily, and the pretended poet withdrew in confusion.†

Somers, on the death of his father, begins to practise as a barrister.

It seemed as if Somers had entirely renounced the law, and meant to devote himself to literature and politics. He was thirty years of age, and although he had been called to the bar five years, he had not yet put on his gown. If such were his views, he now suddenly changed them on the death of his father‡ — when he resolved steadily to follow his profession, and thereby to advance himself to wealth and station.§

* The first edition was published in 1704.

† Life 1716, p. 124.

‡ Life 1716, p. 15.

§ His father died in 1681. His mother survived many years, and enjoyed his greatness and his fame. Both parents being buried at Severn Stoke, Lord

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Whether he was influenced by finding, from the ample provision made for his sisters, the inheritance to which he succeeded much smaller than he expected, or that after the ascendency which the Court had gained, and which all his writings could not shake, it was no longer safe to play the patriot, or that, from the indifferent reception of his poetry among impartial judges, he despaired of gaining celebrity by the Muses, we shall never know. But certain it is, that now he bade a final adieu to Oxford *: he was admitted to chambers in Pump Court †, — he regularly attended the Courts at

Somers erected in the church there a monument to their memory, with the following elegant inscription which he himself composed.

Epitaph by Somers on his parents.

M. S.
JOHANNIS ET CATHARINÆ SOMERS
AMORE OLIM ET FIDE CONJUGALI,
DUM UNA VIXERE,
JAM ET TUMULO CONJUNCTORUM.
QUI
NON FICTA IN DEUM PIETATE,
IN UNIVERSOS CHARITATE,
COMITATE, SIMUL ET PRUDENTIA,
VITAM SIBI IPSIS JUCUNDAM
ALIIS UTILEM GRATAMQUE
EGERE.
ADEOQUE HINC IPSORUM DISCESSUS
AETATE LICET PROVECTIORE,
ALTERIUS SC. SEXAGESIMO ÆTATIS ANNO
ALTERIUS OCTOGESIMO SEXTO,
SUIS IMO CUNCTIS
ACERBUS PLANE VISUS EST ATQUE IMMATURUS.
VIRI MORTEM LONGUM VIDUA DEFLEVIT.
PRISTINO DEHINC IN IPSUM AMORE
AD CARISSIMA PIGNORA, COMMUNES LIBEROS, CONVERSO;
SIC OPTIME DEFUNCTI MEMORIAM COLENS,
SIC VERE SUUM MONSTRANS AFFECTUM:
UTRIUSQUE AUTEM OBITUM
BONI DIUTISSIME DEFLEBUNT.

* I believe that he never took any degree, although I have not been able clearly to ascertain the fact. There are entries of "John Somers" having taken the degree of B. A. 17th October, 1678, and of M. A. 14th June, 1681; but these seem to relate to a John Somers who matriculated 20th March, 1674–75, described as being "the son of John Somers of Exeter, plebeian, and in the 15th year of his age," — Lord Somers being the son of an attorney at Worcester — always describing his father as "generosus," and being then in his 23d or 24th year.

† "Somer J. ad Ca." "Julij 9no 1681°
Die at anno pr dict.
Virtute Actus Parliamenti medij Templi ibm fact 4° die ffebruarij 1678° Mr Johes Somer de le Utter barr admissus est in totam illam Cameram scituat in novis Edificijs nup erect

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His high qualifications.

Westminster,—and he rode the Oxford Circuit, on which he expected that his paternal connection would be useful in bringing him business. Probably no man ever commenced practice as an advocate in England with such high and varied qualifications. He was consummately skilled as a lawyer,—from the practice of commencing an action, which he had learned when a lad in his father's office, to the most abstruse doctrines of real property, which he had imbibed from Winnington, and the most enlarged views of general jurisprudence, with which he had become familiar from his civil law studies at Oxford. He was moreover deeply versed in all constitutional learning, and besides being a fine classical scholar, he was familiarly acquainted with the languages and the literature of all the polished nations on the continent of Europe. Above all, he had steady habits of application, and he could not only make the necessary active exertion, but undergo the necessary drudgery, and submit to the necessary sacrifices, to ensure success at the English bar.

His rapid success.

Accordingly his progress was rapid and brilliant. By his learned arguments and his modest demeanour, he was very favourably noticed by Lord Chancellor Nottingham *, and in a few years his professional profits amounted to 700*l.* a year, a very large sum for those times.†

A. D. 1683.

The first considerable case in which he was counsel, was the trial before Lord C. J. Saunders, at Guildhall, of Pil-

"sup Australem partem cujusdam loci vocat le Pump Co^rt primi gradus in parte Edificion — p^r dict. ppime adjacent le Middle Temple Lane et ex orientali parte graduum p^r dict., et in octavum partem Cellarij sub Edificijs p^r dict. Habend totam illam Cameram p^r dict. cum ptinentijs p^r dco M^r Somer J. Executoribz Admstratoribus et Assignalis suis pro termino vite ipius Johis et p^r duabus Assignaconibus post mortem ejus et dat p^r fine virtute Actus parliamenti p^r dict." } nil . . . .

* Ante, Vol. III., Chap. XCIII.

† Life, 1716, p. 15. "That unwearied diligence which followed him through all the stages of his life gave him such a thorough insight into the laws of the land, that he passed for one of the greatest masters of his profession at his first appearance in it. Though he made a regular progress through the several honours of the long robe, he was always looked upon as one who desired a superior station to that he was possessed of, till he arrived at the highest dignity to which those studies could advance him." ADDISON, *Freeholder*, No. xxxix.

kington and Shute, the late Sheriffs, Alderman Cornish, Lord Grey de Werke, and others, for a riot on Midsummer-day, 1681, when the great struggle took place for enslaving the City of London, and the poll for the election of Sheriffs had been continued after the Lord Mayor, who had been gained over by the Court, had illegally attempted to adjourn it. Somers was retained as Junior, on the recommendation of his old master, Sir Francis Winnington, of Holt, and of the other distinguished Whig lawyers who were to lead for the several defendants.

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He is opposed to Jeffreys as Counsel on the trial of Pilkington.

It was well known that a packed jury had been summoned, and, on consultation, it was resolved "to challenge the array." Somers, as Junior, drew and signed the "*Challenge*," which duly stated the grounds on which the objection rested.

Challenge to the array.

At the commencement of the trial, when the Jury appeared, Mr. Somers said, "My Lord, I challenge the array;" and he put in the "*Challenge*." When it had been read by the Clerk with the signature at the end of it, Jeffreys, then a King's Serjeant and conducting the prosecution, exclaimed, "Here's a TALE OF A TUB indeed!"—*Lord C. J. Saunders.* "Ay, it is nothing else;" * and the challenge was immediately over-ruled. Somers does not appear to have again addressed the Court. The defendants were of course all found guilty, and severely punished.†

Somers counsel for the Seven Bishops.

But the greatest distinction which Somers acquired at the bar, previous to the Revolution, was on the trial of the Seven Bishops. The proposal, that he should be one of their counsel, rather shocked some of the Right Reverend defendants, who at last, driven to question the prerogative of the Crown when directed against the exclusive immunities of the Church, had often preached the doctrine of passive obedience, and had heard this rising young lawyer denounced

* Had "the Tale of a Tub" been then published, this dialogue would have been cited as strong authority to prove that it was generally imputed to Somers; but the first edition did not come out till 20 years later, — Swift was still a boy of 16, — and although, according to Cooksey's theory, the piece had then been written by Somers and the Earl of Shrewsbury, it was communicated to no one except Lord Shaftesbury and Sir William Temple, till Swift purloined it.

† 9 St. Tr. 187.

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as "nothing better than a Whig;" but "old Pollexfen insisted upon him, and would not be himself retained without him, representing him as the man who would take most pains, and go deepest into all that depended on precedents and records."*

Perhaps it was from the industry and zest with which Somers prepared for this trial that Addison, in reference to him, afterwards said, "I have heard one of the greatest geniuses this age has produced, who has been trained up in all the polite studies of antiquity, assure me, upon his being obliged to search into several rolls and records, that, notwithstanding such an employment was at first very dry and irksome to him, he at last took an incredible pleasure in it, and preferred it even to the reading of Virgil or Cicero." †

June 29. 1688. His argument on the objection that no publication was proved in Middlesex.

The result of his researches he fully and freely communicated to Pollexfen and his other seniors, his object being to procure the acquittal of his clients, not to gain *éclat* for himself—"*prodesse non conspici.*"

At the trial he powerfully argued in support of the technical objection, that as the Attorney General could not at first show that the petition of the Bishops had been presented to the King at Whitehall, there was no evidence of a publication of the supposed libel in Middlesex, the county in which the venue was laid. He insisted, that "if the criminal act is not proved to have been committed in the county in which it is alleged to have been committed, the party accused is innocent, and ought to be absolved; for, though he may have committed another offence elsewhere, he has not committed the offence with which he was charged."

Against the opinion of that upright Judge, Mr. Justice Powell, the trial was allowed to proceed, and while the lawyers were squabbling, Lord Sunderland, the Lord President of the Council, was sent for, and proved the publication in Middlesex.

Upon the merits, involving the great question of the "dispensing power," all the defendants' counsel were heard, and

* 3 Ken. Hist., 513. n. † Spectator, No. 447.

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A.D. 1688.

His speech on the merits.

Somers, though coming last (like Erskine in Rex *v.* Baillie*), made by far the most impressive speech. He cited, with much effect, the great case of *Thomas* v. *Sorrel*, in the Exchequer-chamber, upon the validity of a dispensation of the statute of Edward VI. touching the selling of wine.† There the Judges laid it down as a settled position, that there never could be an abrogation, or a suspension (which is a temporary abrogation), of an act of parliament but by the legislative power. He thus concluded, "My lord, by the law of all civilised nations, if the Prince does require something to be done which the person who is to do it considers unlawful, it is his duty *rescribere Principi.* This is all that was done here, and in the most humble manner that could be thought of. Your Lordships will please to observe how careful the defendants were that they might not any way justly offend the King; they did not voluntarily interpose, as they might have done, by giving their advice as peers; they never stirred till a command which they deemed unlawful was laid upon themselves. When they made their Petition, they only went so far as to ask that they might not be compelled to read the Declaration—without even praying that it might be revoked. My lord, as to all the matters of fact alleged in the Petition,—that they are perfectly true we have shown by the Journals of both Houses. In every instance which the Petitioners mention, this power of dispensation was considered in Parliament, and, on debate, declared to be contrary to law. They could have no design to diminish the prerogative, because the King hath no such prerogative. Seditious, my lord, the Petition could not be, nor could it possibly stir up sedition in the minds of the people, because it was presented to the King in private and alone. False it could not be, for the matter of it must be seen to be strictly true. There could be nothing of malice, for the occasion, instead of being sought, was forced upon them. A libel it could not be, for the intent of the defendants was innocent, and they kept strictly within the bounds set by the

* 21 St. Tr. 31.

† Vaughan, 330.

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law, which gives the subject leave to apply to his Prince by petition when he is aggrieved." *

June 30. 1688. Acquittal of the Seven Bishops.

The acquittal which followed was mainly ascribed to this speech of Somers, the effect of which upon the jury was greatly heightened by the modesty and grace with which it was delivered. He now and ever merited the praise that "his pleading at the bar was masculine, and persuasive, — free from every thing trivial or affected."

The Revolution

The Revolution immediately followed.

* 12 St. Tr. 396.

# CHAPTER CVII.

## CONTINUATION OF THE LIFE OF LORD SOMERS TILL HE RECEIVES THE GREAT SEAL.

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FROM the unostentatious character of Lord Somers, there is great difficulty in ascertaining the exact share which he had in originating the bold scheme to expel from the throne, for misrule, him who was the right heir of William the Conqueror, and of the Saxon Kings; but there can be no doubt that the Whig leaders, who were now driven to resort to the sacred right of resistance, and who thought there was a sufficient chance of rescuing the nation from tyranny to justify the attempt, in conducting the enterprize were mainly guided by his advice. From this time he was "the life, the soul, the spirit of his party." * Tindal says that "he was admitted into the most secret councils of the Prince of Orange, and was one of those who concocted the measure of bringing him over." †

A. D. 1688. Share of Lord Somers in bringing over the Prince of Orange.

The Revolution.

June 30. 1688. "The Association."

On the very day of the acquittal of the bishops, and probably by the hand of their junior counsel, was drawn the "Association," — a paper enumerating the various acts of James's tyrannical government, and inviting William to rescue the nation from Popery and arbitrary power. Somers did not put his own name to it, but, along with the Earl of Devonshire, the Earl of Danby, Lord Lumley, the Bishop of London, Admiral Russell, and other men in high station, it was signed by his bosom friend the Earl of Shrewsbury, with whom he had always continued to live in the closest intimacy. This nobleman soon after secretly left England, and joined the Prince of Orange at the Hague, bringing with him a supply of 40,000*l.*, a considerable part of which he was said to have borrowed from Father Petre, and other catholics, —"holding it no sin to impoverish and spoil the enemy." ‡

* Letter of Lord Sunderland to King William.

† Continuation of Rapin, vol. ii. 770.

‡ Ib.

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The Prince's Declaration.

The Prince's "Declaration," which came out soon after, and in which he announced his design to proceed to England "to have a free and lawful parliament assembled for the preservation of the Protestant Religion, and for securing to the whole nation the free enjoyment of their laws and liberties;" if not framed by Somers, certainly had his previous approbation.

Somers's conduct on the landing of the Prince.

When William had landed in England, Somers still avoided making himself conspicuous, but he attended all the meetings of the Whig leaders, prompted their measures, and, on the flight of James, he concurred in the advice that a Convention should be assembled — to guard against the notion of a change of dynasty by conquest, and to lay the foundations of a free monarchy on the constitutional basis of the national will.

He is returned to the Convention Parliament.

He had declined the overtures made to him to be returned to the House of Commons in the two last parliaments held in the reign of Charles II., and in the parliament summoned by James II.; but he was now prevailed upon openly to adventure on the stormy sea of public life. In his thirty-seventh year he was elected to the Convention Parliament, as representative for his native city of Worcester.

Differences between the two houses.

From the first meeting of the two houses a difference of sentiment appeared between them. The Commons were almost unanimously for dethroning James, and disregarding the claims of his son; while a majority of the Lords, with a strong feeling in favour of the divine right of Kings, were desirous of some expedient whereby immediate danger to religion and liberty might be warded off, without violating the order of succession to the crown.

Jan. 28. 1689. Somers proposes and supports the resolution that James had abdicated, and that the throne was vacant.

Somers from the first led the deliberations of the lower house. In a maiden speech he laid down the true principles of limited monarchy; he showed that James had forfeited his right to allegiance, and he pointed out a parallel case which had occurred in the history of Sweden, when King Sigismund having attempted to subvert the laws and religion of his native country, and having fled to a foreign state, was set aside, and Charles VIII. was set upon the throne. He concluded by moving a committee of the whole house "on

the state of the nation."* The debate terminated in the memorable Resolution which he drew — not in the language which he himself would have selected, but in such as might be suited to the opinions and prejudices of others: "That King James II. having endeavoured to subvert the constitution of the kingdom by breaking the original contract between King and People, and by the advice of Jesuits and other wicked persons having violated the fundamental laws, and having withdrawn himself out of this kingdom, has abdicated the government, and that the throne is thereby become vacant."†

Resolution against a Popish Prince.

The following day Somers gained a signal triumph in the agreement of the House of Commons, by acclamation, to the principle on which the "Exclusion Bill" had been framed, and their vote, without a dissentient voice, "that it hath been found by experience inconsistent with the safety and welfare of this Protestant kingdom that it should be governed by a Popish Prince." ‡ There is evidently a broad distinction between the Crown and any subordinate political office; nor can it be considered at all inconsistent with the doctrine of toleration to require for the public security that the Chief Magistrate shall be of the religion of the majority of the nation, leaving him of course full liberty of conscience, and of worship in a private station. In Saxony and other states a different rule has been observed, and some confidence might be placed in a well-defined prerogative, and in the forbearance of modern times; but there is an evident advantage in the Sovereign being of the national religion: — which may fairly be secured by the penalty of loss of power for dissent. This restraint of course never can be complained of by the present royal family of England, as it was the condition on which they accepted the throne, and if it be unjust, we should transfer our allegiance to the Duke of Modena, who is sprung from Charles I., and is the lineal heir of the monarchy.

* 5 Parl. Hist. 42. † Parl. Hist. 50.

‡ Somers's Tract on the Exclusion Bill, entitled "a History of the Succession, &c.," was republished soon after William landed, and had a considerable effect upon the public mind.

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The two resolutions.

The two resolutions being sent up to the Lords for their concurrence, the latter was carried unanimously, but the former, guarded and qualified as it was, raised among their Lordships great alarm and opposition. In order to save a nominal allegiance to the late King, it was first proposed that there should be a *regency* — with the administration of regal power under his name, as the best and safest way to preserve the protestant religion and the laws of this kingdom. This was supported by all sections of the Tories — as well by those who really meant to exclude James from the enjoyment of power, such as the Earl of Nottingham, its great promoter, as by those who, like the Earl of Clarendon, were anxious for his return upon terms of security for their religion and liberty. The motion was negatived only by a majority of two, — the numbers being 51 to 49. Next came a close division of 55 to 46 on the abstract resolution, "that there is an original contract between King and people," which perhaps was necessary by way of negativing the doctrine of the divine origin of kingship — opposed to any human legislation in regulating the descent of the crown. But in coming to the "*abdication,*" and the "*vacancy of the throne,*" the tide turned, and by a majority of 55 to 41, it was resolved to substitute the word "*deserted*" for "*abdicated,*" and entirely to omit the clause declaring "the throne to be vacant"; Lord Danby and his friends considering the young Prince as spurious, and wishing that the Princess of Orange should be declared successor by hereditary right.*

Proceedings of the Lords.

Conferences between the Two Houses.

The amendments were reported to the Commons — with the request of a Conference. This was carried on by written reasons, and at the end of it the Commons determined by 282, to 151, to adhere to the words of their resolution.

* The credit pretended to be given to the story of "the warming-pan" is the great blot on the Revolution, and is discreditable to all parties; but it was most eagerly caught at by the Tories, that they might reconcile their transference of allegiance to their doctrine of indefeasible right. There are very few persons now alive who could so satisfactorily be shewn to be sprung from their lawful parents as the infant Prince, by evidence then before the world, was demonstrated to be the son of James II. and Mary of Modena, his Queen.

February, 1689. A "Free Conference."

Then followed the celebrated "Free Conference" between the two Houses which was conducted by *vivâ voce* debate. Somers was one of the managers for the Commons, and he being pitted against the Earl of Nottingham, the cause of "abdication and the vacancy of the throne" rested chiefly on his shoulders. It must be confessed that the speeches on this occasion are by no means what might have been expected from enlightened statesmen settling the constitution of a great nation, and rather remind us of the quibbling argumentations of pleaders in a court of law on a special demurrer to a declaration or plea for want of form. Somers defends the word "abdicate" by quotations from Grotius, Calvin's Lexicon Juridicum, Bressonius de Verborum Significatione, Budæus, Pralejus, and Spicilegius; and then he falls foul of the word "desert," which, from its etymology and its use, he contends is wholly inapplicable to a permanent renunciation, and means only a voluntary relinquishment — with the power of resumption.* "The vacancy of the throne," he chiefly defends from the record in 1 Hen. IV., where it is said that upon the deposition of Richard II. "*Sedes regalis fuit vacua, et confestim, ut constabat ex præmissis, regnum Angliæ vacare,* then Henry riseth up out of his place as Duke of Lancaster, and claims the Crown, — *dictum regnum Angliæ sicut præmittitur vacans una cum corona vendicat.*"† Yet it is to Mr. Somers's reasons, such as they are, that Nottingham and the other managers for the Lords chiefly apply themselves in supporting their word "desert," and insisting, that by the constitution of England the throne never can by possibility be in contemplation of law one moment vacant. Amidst these technicalities, the real struggle was, whether there should be a change of dynasty, or the experiment should be made of

Arguments for the word "abdication," and for declaring "the throne vacant."

* Burton, in his work on "Melancholy," first published in 1621, uses the word "abdicated" in the same sense as Mr. Somers. So Molinæus, in his "Treatise on Fiefs," says — "Sequitur quod non potest alienari, *abdicari* nec præscribi."

† 5 Parl. Hist. 68. "The dispute about the words 'abdicate' or 'desert,'" says Bolingbroke, "might have been expected in some assembly of pedants, where young students exercised themselves in disputation, but not in such an august assembly of the Lords and Commons in solemn conference upon the most important occasion."

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Protestant regents governing in the name of popish sovereigns. Somers and the Whigs were not only afraid of the public confusion which might follow from such an anomalous administration of the government, but were strongly convinced that there could be no permanent reformation of abuses till, by a break in the succession, the doctrine of "divine right" should be necessarily renounced and discountenanced by the family on the throne.

The Lords give way.

The conference closed without any convert being made; but, the Commons remaining firm, and William threatening to return to Holland, the Lords by a majority of sixty-two to forty-seven, resolved not to insist on their amendments to the original vote; and they precipitately followed this up by a resolution "that the Prince and Princess of Orange shall be declared King and Queen of England, and the dominions thereunto belonging."* The object now probably was to avoid any recognition of the Whig notion of a contract between the governors and the governed. "But the Commons with a noble patriotism delayed to concur in this hasty settlement of the crown, till they should have completed the declaration of those fundamental rights and liberties for the sake of which alone they had gone forward with this great revolution."† A committee had been appointed, of which Somers was the leading member, "to bring in general heads of such things as were absolutely necessary to be considered for the better securing our religion, law, and liberties." The Committee made their report the day after the last vote of the Lords; and though it is little noticed by historians who have looked only to the "Declaration of Rights," and the "Bill of Rights," which spring from it, it is a most interesting document, and reflects immortal honour on the name of Somers. The careful reader will perceive that he here suggests some few grievances and remedies which were omitted by the two houses in their ensuing vindication of public liberty; but the discrimina-

Feb. 7. 1689. Report of committee to consider of the redress of grievances drawn by Somers.

* 5 Parl. Hist. 93.; Lords' Journ. Feb. 6. The Scottish parliament proceeded in a more manly manner, by a direct vote that James had *forefaulted* the Crown.

† Hall. Const. Hist. iii. 134.

Its great merit.

tion, the moderation, and the firmness displayed by him and his party at this crisis are above all praise, and contrast most favourably with the blind enthusiasm of the French National Assembly a century later, and with the spoliation and violence which have generally marked revolutionary movements. The maxim of the Whig patriots was to change only what was necessary to be changed for the good government of the country. They therefore departed as little as possible from the hereditary succession to the throne, and they only strengthened and secured our ancient constitution and laws. Hence the settlement was lasting, and we pray that IT MAY BE PERPETUAL!

The Report was divided into twenty-four heads, partly pointing out infringements of existing rights, and partly new safeguards for public freedom:—" 1. The pretended power of dispensing or suspending of laws, or the execution of laws, by regal prerogative, without consent of Parliament, is illegal.* 2. The commission for erecting the late Court of Commissioners for ecclesiastical causes, and all other Commissioners and Courts of the like nature, are illegal. 3. Levying money for or to the use of the Crown by pretence of prerogative, without grant of Parliament, for longer time, or in any other manner than the same shall be so granted, is illegal.* 4. It is the right of the subject to petition the King, and all commitments and prosecutions for such petitioning are illegal.* 5. The Acts concerning the militia are grievous to the subject. 6. The raising or keeping a standing army within this kingdom in time of peace, unless it be with the consent of Parliament, is illegal.* 7. It is necessary for the public safety that the subjects (which are Protestants) should provide and keep arms for their common defence, and that the arms which have been seized and taken from them be restored.* 8. The right and freedom of electing members of the House of Commons*, and the rights and privileges of Parliament and members, as well in the intervals of parliament as during their sitting, to be preserved. 9. That Parliament ought to sit frequently, and that their

* Adopted in the Bill of Rights.

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frequent sitting be secured.* 10. No interrupting of any session of Parliament till the affairs which are necessary to be despatched at that time are determined. 11. That the too long continuance of the same Parliament be prevented. 12. No pardon to be pleadable to an impeachment of Parliament.† 13. Cities, universities, towns, corporate boroughs, and plantations, to be secured against *quo warrantos* and surrenders, and restored to their ancient rights. 14. None of the royal family to marry a Papist.‡ 15. Every King and Queen of this realm, at the time of their entering into the exercise of their royal authority, to take an oath for maintaining the Protestant religion, and the laws and liberties of the nation, and that the coronation oath be revived.§ 16. Effectual provision to be made for the liberty of Protestants in the exercise of their religion, and for uniting all Protestants in the matter of public worship, as far as may be. 17. Constructions upon the statutes of treason, and trials, and proceedings, and writs of error, in cases of treason to be regulated.‖ 18. Judges' commissions to be made *Quamdiu se bene gesserint*, and their salaries to be ascertained and established, to be paid out of the public revenue only, and not to be removed nor suspended from the execution of their office but by due course of law. 19. The requiring excessive bail of persons committed in criminal cases, and imposing excessive fines and illegal punishments, to be prevented.¶ 20. Abuses in appointing sheriffs, and in the execution of their office, to be reformed. 21. Jurors to be duly impanelled and returned, and corrupt and false verdicts prevented.¶ 22. Informations in the Court of King's Bench to be taken away. 23. The Chancery and other courts of justice, and the fees of office, to be regulated. 24. That the buying and selling of offices may be effectually provided against. 25. That upon return of habeas corpuses and mandamuses, the subject may have liberty to traverse such

* Triennial Act, 6 W. & M. c. 10.

† 12 & 13 W. 3. c. 2.

‡ 13 W. 3. c. 2.

§ 1 W. & M. st. 2. c. 2.; 12 & 13 W. 3. c. 2.

‖ Stat. 7 W. 3. c. 3. respecting trials for treason.

¶ "Declaration of Rights and Bill of Rights."

return. 26. That all grants of fines and forfeitures are illegal and void; and that all such persons as procure them be liable to punishment.* The last two heads of grievance are against the collection of Hearth-money†, and the abuses of the Excise.

Declaration of Rights.

"The Declaration of Rights," prepared by another committee, under the management of Somers, was wisely confined to the declaratory part of the Report, and being agreed to by the Lords, was made the basis on which the Crown was tendered to, and was accepted by, William and Mary. Most of the other articles in the Report were embraced in the Act of Settlement and other constitutional statutes which followed, but the obligation to serve in the militia ‡ continued as a necessary evil; and it has always been thought that it would be dangerous to limit the prerogative of the Crown to prorogue or dissolve Parliament at pleasure§, the constant necessity for votes of supply abundantly securing the summoning and the sitting of legislative assemblies. The law respecting *Quo Warrantos* and Informations in the King's Bench, though not substantially altered, has been regulated in practice so as to avoid all oppression or abuse. Somers's views were disappointed only with respect to the church.‖ Preserving all respect for the property and rights of the clergy, he evidently contemplated a larger measure of religious freedom than he was able to accomplish, or than was enjoyed in England till very recent times; and, wishing to repair the bad faith of Lord Clarendon at the Restoration, he was in hopes that the establishment might be made more comprehensive.¶ It may further be observed, that the "Declaration of Rights" and the "Bill of Rights" supplied a deficiency in the "Report" by embracing the recent illegal prosecutions in violation of parliamentary privilege, and in requiring security for the liberty of the press.

Constitution settled by the wisdom of Somers.

We cannot sufficiently admire the skill with which Somers encountered the difficulties opposed to him. Notwithstanding the strong prejudices of the Tory party, comprehending a

* Declaration of Rights and Bill of Rights.
† Abrogated by 1 W. & M. c 10.
‡ Art. 5.
§ Art. 9. and 10.
‖ Art. 13. 22.
¶ Art. 16.

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large proportion of the wealth and rank of the country, he contrived, with a few exceptions, to have the constitution placed on what he considered its true basis. There was a small republican party still subsisting; but he by no means belonged to it, for he thought that under a limited monarchy, enlightened public opinion had the greatest influence, and general prosperity was best secured.*

Somers's official promotion.

When the ministry was formed after the proclamation of William and Mary as King and Queen, the merits of Somers were by no means overlooked. The leaders who had been guided by his advice were desirous still to avail themselves of his services, and through the Earl of Shrewsbury he had been made personally known to William, who, from their first interview, placed more confidence in him than in any English politician. We are surprised therefore to find him only in the subordinate office of Solicitor-General. But he would not renounce politics by becoming a Common-law Judge; the aristocratic Whigs have ever been slow to associate with themselves in high office any one who cannot boast of distinguished birth †: he would not leave the bar for the precarious appointment of Lord Commissioner of the Great Seal; and, agreeing to become a law-officer of the crown, he confessed that Sir George Treby, who was to be his colleague, and who was greatly his senior, could not be asked to serve under him.—At the same time he submitted to be knighted. ‡

He is made Solicitor General, and knighted.

But though never eager to put himself forward, he had much more weight in the House of Commons than the

* With the exception of parliamentary Reform, which was then little thought of, although a more equal representation of the people will be found referred to in some of the pamphlets of that day, there is hardly any constitutional improvement which may not be traced to the recommendation of the patriots of 1689.

† The most striking instance of this is the exclusion of Edmund Burke from the Cabinet on the formation of the Rockingham administration, after he had led the opposition for years in the House of Commons. The exclusion of Sheridan from the Cabinet in 1806 would be still more extraordinary, if it were not accounted for by the unfortunate habits which he had then contracted.

‡ He was immediately made a Bencher of the Middle Temple.

"Ad Parliamentũ tentũ 10$^{mo}$ die Maij 1689$^{o}$

"M$^{r}$ John Somers being made ye Kings Sollicito$^{r}$ Generall is called to the Bench."

About the same time he was elected Recorder of the city of Gloucester.

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Attorney General, and while he was desirous of affording all fair assistance to the Government, he never forgot the principles of civil and religious liberty which he had before professed. His first official speech was in support of the "Bill for declaring the Convention a Parliament," contrary to the opinion of those who questioned its legality, because it was not summoned by royal writ. "He said, 'if this were not a legal parliament, they who had taken the oaths which it prescribed were guilty of high treason; the laws repealed by it were still in force; all concerned in levying, collecting, or paying taxes under its statutes, were highly criminal, and the whole nation must presently return to King James.' This he spoke with much zeal, and such an ascendant of authority, that none was prepared to answer it; so the bill passed without any more opposition. This was a great service done in a very critical time, and contributed not a little to raise Somers's character." *

Feb. 19. 1689. Convention turned into a Parliament.

He carried through the Toleration Act †, which, if its conditions had been strictly enforced, would have been found a most scanty measure of religious liberty. ‡ He found that the scheme of comprehension which he had contemplated for England was impracticable. But he had the satisfaction of successfully advising the King to agree to the establishment in Scotland of the Presbyterian religion, — devotedly cherished by the vast majority of the inhabitants of that kingdom, — whereby the most discontented, turbulent, and miserable nation in Europe soon became loyal, peaceable, and prosperous.

The next important question agitated was, whether the revenue granted during the life of King James had expired? The courtiers, to please William, contended that this revenue was vested in their present Majesties during the natural life of the abdicated monarch; but Somers, "*qui potius patriæ opes augeri quam regis maluit,*" argued, that "looking to the preamble of the act granting the revenue, which specifies the

Quære, Whether taxes granted during the life of James II. expired on his abdication?

* Burnet, iii. 57. † 1 W. & M. st. 1. c. 18.

‡ Its benefits were confined to Dissenters who professed a belief in almost all the doctrines of the Church of England; but it was very liberally interpreted, and by and by, the most crying grievances of the Dissenters were practically remedied by the annual Indemnity Act.

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purpose of the grant when it was limited to the *King's life*, it must be intended *for his reign*; abdication works a demise of the crown; after which the natural life of him who had reigned cannot be recognised." He therefore suggested a more rational and constitutional course, and the House of Commons being of opinion that the revenue had expired, an act passed "granting a present aid to their Majesties." *

Appropriation of the revenue.

He then assisted in the grand reform of appropriating the revenue to the public service — making the King a proper allowance for his personal and household expences — which was one of the most important results of the Revolution, a sovereign having previously plunged the nation into foreign war that he might obtain money to lavish upon his mistresses. Somers never used overbearing language in parliament, and on this occasion he modestly concluded his speech with the words "Settle it as you please." †

Coronation oath.

When the terms of the coronation oath came to be discussed he supported an amendment, the adoption of which would have saved much unnecessary pain to royal consciences, and would have deprived bigotry of an unfair weapon. Instead of the words, "Will you, to the utmost of your power, maintain the true profession of the gospel and the Protestant reformed religion *established by law?*" Mr. Hampden moved to insert the words, "the true profession of the gospel, and the Protestant reformed religion *as it may be established according to the laws for the time being.*" Somers contended that the words to be added were an improvement, as obviating all doubt respecting the power of the legislature. He met the argument "that they were going about to alter the government of the Church," by urging that though the constitution be as good as possible for the present time, none can be good at all times. "Therefore," said he, "I am for the word *may*, and that will be a remedy at all times." But the amendment was negatived by a majority of 188 to 149 ‡, and the foundation was laid for the argument that the coronation oath is binding on the

* 1 W. & M. c. 8. The statute provided that all Acts passed should have reference to the 13th of February as the first day of the Session,—being the day when the King and Queen agreed to take the government. — See Grey's Debates, p. 93.

† 5 Parl. Hist., 144.

‡ 5 Parl. Hist. 204. Stat. 1 W. & M. c. 6.; 12 & 13 W. 3. c. 2.

sovereign in his legislative capacity, and is violated by giving the royal assent to such laws as "The Catholic Relief Bill," or "The Bill for repealing the Test Act," or "The Bill for granting an additional endowment to Maynooth," — an argument which has great weight with many well-meaning persons, although it was scouted even by Lord Kenyon in his correspondence with George III.

Attempt to exclude from corporations all who had concurred in disfranchising corporations in the preceding reign.

Somers was defeated in another attempt for which he has been a good deal censured, although I think unjustly. Into the "Bill for restoring corporations," he introduced a clause which excluded for the space of seven years from municipal offices of trust "all who had acted or were concerned in surrendering charters." This was no doubt intended to maintain the superiority of the Whigs; but the profligate activity and cowardly submissiveness of the opposite party in yielding to the *quo warrantos*, by which all free municipal institutions had been swept away in the late reign, seemed to deserve this censure, and the measure could by no means be put on a level with the Corporation Act of Charles II., which created perpetual disabilities. "As the Dissenters, unquestioned friends of the Revolution, had been universally excluded by that statute, and the Tories had lately been strong enough to prevent their readmission, it was not unfair to provide some security against men who, in spite of their oaths of allegiance, were not likely thoroughly to have abjured their former principles." * Notwithstanding the strenuous support of the Solicitor General, the clause was lost, so that those who had come into corporations by very ill means, retained their power, and, as appeared at the next general election, the Revolution party was alarmingly weakened. †

His unconstitutional doctrine, that Parliament may *judicially* declare new treasons.

In looking through and considering Somers's speeches in the House of Commons, I find one instance, and one only, in which he maintains what I consider unconstitutional and dangerous doctrine. To the "Bill for regulating trials for High Treason" passed by the Commons, the Lords had added a proviso, which, when the amendment came back to be considered, it was objected would interfere with the sup-

* Hall. Const. Hist. iii. 155.

† See Com. Jour. ii. 10. Jan. 1690. 5 Parl. Hist. 508.

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posed right of the Commons to proceed by impeachment for other treasons than those specified in 25th Edward III., and which by that statute are reserved for the judgment of parliament, by the words "in doubtful treasons the Judges shall tarry and not proceed till the parliament have declared the same." I have expressed a strong opinion that these words only reserve the power of parliament legislatively and prospectively to declare new treasons; and certainly there would be no safety for mankind, if, upon a parliamentary impeachment, a man may be punished as a traitor for any act which the Commons charge, and the Lords find, to be treason, although never before considered to have this character. Mr. Solicitor, however, makes a speech against the amendment not very courteous to the Upper House. "The more dark," says he, "the Lords' amendments are, the more they are to be suspected. The House of Commons go from their dignity and lessen themselves by listening to such amendments. The power of impeachment ought to be like Goliah's sword, kept in the Temple, and not used but on great occasions. The security of your constitution is lost when you lose this power. The statute of 25th Edward III. did foresee that men would be above the law, and I believe did not take away those that were treasons at common law. *Seductio Regis* can be punished no otherwise than in parliament. Let us adhere to our Bill as we passed it." * In consequence of this unwise controversy stirred up between the two Houses, the passing of a most useful law, allowing to the accused, in prosecutions for treason, a copy of the indictment, a list of the jury and of the witnesses, and a full defence by counsel, was postponed for some years. † But the doctrine of the power of parliament, judicially and retrospectively to declare new treasons upon which such out-

* 5 Parl. Hist. 677—680, 712. This being the last occasion of my mentioning Somers as a Member of the House of Commons, I must express my deep sorrow for the inadequacy of our means of judging of his oratory from the very imperfect reports we have of his speeches there. He did that justice to others which he himself has not experienced. During the first Session of the Convention Parliament he took notes of the debates, which are still preserved, and which, being full, clear, and spirited, give us a very lively notion of the eloquence of the leaders on both sides. — See Hardwicke State Papers, vol. ii. 401, &c.

† See 7 W. 3. c. 3. 7 Ann. c. 21.

rages were perpetrated in the time of Charles I., both by the court and the popular party, has been heard of no more.

The admirable manner in which the prosecution of Lord Preston for high treason was conducted.

Somers, in conducting prosecutions officially before courts of justice, was most mild, candid, and merciful. The first state trial in the reign of William and Mary was that of Lord Preston; and it is a true refreshment to peruse the report of it, as it is in every respect a striking contrast to all that had preceded it. Mr. Macaulay justly observes, that "The earlier volumes of the STATE TRIALS are the most frightful record of baseness and depravity in the world. Our hatred is altogether turned away from the crimes and the criminals, and directed against the law and its ministers. We see villanies as black as ever were imputed to any prisoner, at any bar, daily committed on the bench and in the jury-box."* It is difficult to believe, that little more than three years had elapsed between the prosecution of the Seven Bishops and the prosecution of Lord Preston, as we seem suddenly transferred to another age, or to a distant country, where the principles of justice were held sacred instead of being violated and despised. The Judges were Holt, Pollexfen, and Atkyns, the three chiefs of the common-law Courts, who had been selected for their learning, talents, and integrity. A decent excuse was found for the absence of the King's Serjeant and the Attorney General;—and, to consult the credit of the Government, the case for the Crown was conducted by Mr. Solicitor Somers.

After some preliminary objections had been answered and overruled in a tone of kindness, he opened the case to the jury with beautiful simplicity and moderation; laying down the law of treason with perfect correctness as well as precision, never overstating the facts which were afterwards to be proved, and abstaining from all observations which could tend to raise a prejudice against the accused. He thus concluded, "Gentlemen, we shall now proceed to the evidence, first calling the living witnesses, and then reading the papers which will be proved to be in the handwriting of the prisoner, or to have been found in his possession; and when you have heard what the witnesses say, and what the papers contain, we

* Macaulay's Essays, vol. ii. p. 270.

must leave it to your consideration, and submit all to the direction of the Court."

The evidence was then adduced, every iota of it being such as would now be received by those upright Judges, Lord Chief Justice Denman and Lord Chief Justice Tindal, and it clearly established the charge that Lord Preston had engaged in a Jacobite plot to dethrone King William and Queen Mary, by means of the invasion of a French army. While Lord C. J. Holt was summing up, the prisoner frequently interrupted him, and a specimen of the dialogue between them may be instructive. The Judge commenting upon a paper which purported to be "Heads for a declaration by the King of France on his landing, that he did not come to make an entire conquest," Lord Preston interposes, "My Lord, with submission to your Lordship, I hope you will please to remember and observe to the Jury that paper was not found about me." *Lord C. J. Holt.*—"No, my Lord, it was not; but good my Lord, give me your favour, I will certainly observe every thing that is fitting, but I cannot speak all my words at once. Gentlemen, my Lord Preston insists upon it that this paper was not found about him. It is true, but you have three witnesses, Mr. Townshend, Mr. Bland, and Mr. Warr were produced, to prove the paper to be in my Lord's hand; Mr. Townshend tells you he was acquainted pretty well with my Lord's hand; he was one of his clerks in the office of the wardrobe; he says he has seen my Lord write several times, and does believe the writing to be his hand; and to the same purpose says Bland, and Warr, who has seen him write, swears that he believes it to be his hand." *Lord Preston.*—"I hope your Lordship will please to observe to the Jury that this is only a proof by similitude of hands." *Lord C. J. Holt.*—"They only say they believe it to be your hand. Nobody says they saw you write it." *Lord Preston.*—"I give your Lordship thanks for observing that the paper was not proved to have been taken upon me; but I beg pardon for interrupting of your Lordship." *Lord C. J. Holt.*—"Interrupt me as much as you please, if I do not observe right: I will assure you I will do you no wrong willingly." The

summing up being concluded, Lord Preston begged permission again to address the Jury before they went out. *Lord C. J. Holt.*—"Your Lordship should have said what you had to say before: it is contrary to the course of all proceedings in such cases to have any thing said to the Jury after the Court has summed up the evidence. But we will dispense with the rule. What has your Lordship to say?" *Lord Preston.*—"My Lord, I humbly thank your Lorship; I am not acquainted with such proceedings." *Lord C. J. Holt.*—"You know I permitted your Lordship to interrupt me as much as you would, which was never done before in any such case." He was then patiently heard, and he chiefly complained that after the Revolution when he had been deprived of the places which he held under King James, and wished to live a retired life, he had been twice imprisoned in the Tower, which filled him with a desire to leave the country. Holt mildly answered, "Suppose your Lordship did think yourself hardly used, yet your Lordship must remember it was in a time of danger that your Lordship was taken up, and you had showed your dissatisfaction with the present government, and therefore they were not to be blamed if they secured themselves against you."*

The Jury, who had been most impartially selected, after retiring for half an hour, brought in a verdict of *guilty*—upon which Lord C. J. Pollexfen calmly remarked, "I think truly, gentlemen, you have done according to your evidence; and though it be a hard case upon particular men who have brought themselves into these inconveniences, yet it is necessary that justice should have its due course, or else there is no safety for any society or government."

The full merit of the conduct of this prosecution cannot be fully appreciated without recollecting that the case was intensely political; that if the prisoner's party had prevailed, the Judges and the counsel would have exchanged places with him; and that, according to all former precedents, he ought to have been convicted without being heard, or to have been attainted by act of parliament, and immediately led out

* "Res dura, et regni novitas, me talia cogunt
Moliri, et late fines custode tueri."

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to execution. But the majesty of the law being vindicated, — on the recommendation of Somers, Lord Preston received a free pardon.*

Declaration of war against France drawn by Somers.

While still Solicitor General, Somers was consulted confidentially by the Government on all public measures, and to him was assigned the task of drawing the declaration of war against France. This is a very able state paper, — although, the denial of the new Sovereign's right to the crown not being referred to, the list of grievances does not appear very formidable; and, to tickle the national vanity, it was considered necessary to complain that Louis had not recognised our sovereignty of the narrow seas, — which had been virtually renounced by Charles II., in his last treaty with the Dutch: "The right of flag inherent in the crown of England," William is made to say, "has been disputed by orders of the French King, in violation of our sovereignty of the narrow seas, which in all ages has been asserted by our predecessors, and we are resolved to maintain for the honour of our crown and of the English nation." After denouncing the ill treatment which English subjects had experienced in France, it magnanimously concludes with an assurance "that all Frenchmen in the British dominions behaving themselves peaceably shall be safe in their persons and estates, and free from molestation and trouble of any kind."

Somers Attorney General.

On the 2d of May, 1692, Somers was promoted to be Attorney General in consequence of the appointment of Sir George Treby to succeed Pollexfen as Lord Chief Justice of the Court of Common Pleas. He had previously been the first man in point of practice at the bar, being retained in all private causes of any importance, as well as conducting the prosecutions of the Government. He was counsel for the plaintiff in the great case of the *Duke of Nolfolk* v. *Germaine*, the first instance on record of an action peculiar to England, and not very creditable to our jurisprudence — to recover a pecuniary compensation for criminal conversation with the plaintiff's wife. It was now established, contrary to the opinion of the early English reformers, and contrary

June, 1692. Counsel in the first action for *crim. con.*

* 12 St. Tr. 646—822.

to the practice of all other protestant countries, that marriage could not be dissolved, even for adultery, by the ordinary tribunals: but in the case of Lord de Roos * the legislature had granted relief to the injured husband by a special act of parliament. On the authority of this precedent the Duke presented a divorce bill in the House of Lords, on the ground of adultery between the Duchess and Sir John Germaine, as he had obtained a sentence of separation *à mensâ et thoro;* but as the evidence was doubtful, the bill was negatived. He was then advised to have the fact proved in a court of law, and he brought the present action, laying the damages at 100,000*l.* The trial came on before Lord Chief Justice Holt; and the new Attorney General appeared for the plaintiff. Instead of a lengthy and exaggerated statement of the wrongs of the injured husband, such as would now be expected, he stated the nature of the case in a few plain sentences, saying, "our proofs are such as I am ashamed to repeat them." There being a plea of the statute of limitations, the difficulty was to give the requisite evidence within six years before the commencement of the action. The jury found a verdict for the plaintiff, with 100 marks damages. "Upon which they had a severe reprimand from the Court for giving so small and scandalous a fine," — but without sufficient cause, as there was great reason to suspect that the Duke had connived at his own dishonour. He was not able to carry his divorce bill till Somers was Chancellor. †

Jan. 31. 1693. He conducts prosecution against Lord Mohun for murder.

The only other case of much importance in which this distinguished Attorney General is recorded to have appeared as counsel at the bar, was that of Lord Mohun, indicted for the murder of William Mountford. The trial took place before the House of Peers, the Marquis of Carmarthen acting as Lord High Steward. Mr. Attorney General Somers conducted the prosecution, and again furnished a most valuable illustration of the duties of an officer of the Crown upon such an occasion. After a few observations on the law of the case, he said, "My Lords, it is my part to give an account of the nature of the evidence, to the end

* A. D. 1699.

† See 12 St. Tr. 883—950.; Macqueen's Practice of House of Lords, 562.

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that your Lordships may more easily go along with the witnesses as they are examined, and more readily make your observations on what they say. This I shall do as shortly and as exactly as I can, without pretending to aggravate any thing, which I could never think did become any one in my station; and I am sure would be to very little purpose upon such a judicature as this; for, after all, your Lordships will found your judgments upon the fact, not as it is represented by us, but as it appears upon the oaths of the witnesses."

The deceased, a favourite comic actor, had been a lover of the celebrated Mrs. Bracegirdle, and had been killed in an affray which arose out of an attempt forcibly to carry her off from Drury Lane. After many abstract questions put to the Judges respecting the crime of murder, the noble prisoner was acquitted by a majority of 69 to 14; but, as we shall see, he was again tried for a similar murder, and he was at length killed in a duel.*

Conflicting duties of Attorney General in the House of Commons and House of Lords.

Before Somers left the bar, he on one occasion got into a very disagreeable embarrassment from his conflicting duties as member of the House of Commons, and assessor to the House of Lords. While sitting in St. Stephen's Chapel as Chairman of a Committee of the whole House, the Lords sent for him to advise them in the case of Lord Banbury, who being charged with murder, had pleaded his peerage. He immediately left the Chair and broke up the Committee, which gave some disgust to the Commons; and the Lords, because they had waited some time for him, instituted an inquiry whether the Attorney General is not obliged by his post to attend their House, and presented an address to the Crown, praying that he might be directed to do so.†

* 12 St. Tr. 950.; 1 Salk, 104.; Skyn. 683.; Swift's Journal to Stella, 15th Nov. 1712.

† See Lords and Com. Journ. 1693. The Attorney General is summoned to the House of Lords by a writ in all respects the same as that of a peer, omitting the words "ad consentiendum." On the trial of a peer he sits without the bar, if he be a member of the House of Commons, and within the bar if he is not. If he returns his writ, he may sit on the woolsacks; but then he is precluded from pleading in any private cause at the bar. From 1620 to 1670 no Attorney General continued a member of the House of Commons after his appointment. Since then he has always been a member, unless casually, since the Reform Bill, from the difficulty of finding a seat. Previously a seat was found for him by

Somers remained Attorney General rather less than one year. In the new parliament which met in the spring of 1693, he was again returned as representative for the city of Worcester, and in sixteen days after the commencement of the Session he was Lord Keeper of the Great Seal. The complaints of the administration of Justice in the Court of Chancery had become so loud that they could be neglected no longer, and all eyes were turned to the man who, practising with unrivalled brilliancy, had shown, as an advocate, moderation, candour, and good temper, which were sure to qualify him to preside as a Judge.

Somers receives the Great Seal as Lord Keeper.

The Tory section in the Government, while they could not deny his merit, being afraid of his influence, urged various pretences for delaying his promotion, while the Whigs were eager to see him the ostensible head, as he had long been the most efficient leader, of their party. Rumours were spread of a speedy transfer of the Great Seal to abler hands. "Fama non semper errat; aliquando etiam et eligit;" and on the 23d of March it was officially announced, that the Great Seal having been surrendered by the Lords Commissioners, Trevor, Rawlinson, and Hutchins, had been delivered to Sir John Somers, their Majesties, Attorney General, as Lord Keeper, who was at the same time sworn of their Majesties' Most Honourable Privy Council.*

the Treasury, at the fixed price of 500*l.*—His proper official place in the King's Bench is under the Judges, on the left hand of the Master of the Crown Office. — Ralph ascribes the proceedings taken on this occasion against Somers to the spite of the Jacobites.

* London Gazette, March 23. 1693. "His Majesty was this day graciously pleased to commit the custody of the Great Seal to the Right Honourable Sir John Somers, their Majesties' Attorney General, who was accordingly sworn Lord Keeper of the Great Seal of England, and one of their Majesties' Most Honourable Privy Council, and then took his place at the Board." The biographers of Somers have generally stated that he was appointed Lord Keeper on the day of his installation, 3d May. Evelyn brings it forward a few days, writing of what had been determined upon, although not formally completed. "19th March. The Attorney General Somers made Lord Keeper, — a young lawyer of extraordinary merit." — *Diary.*

# CHAPTER CVIII.

## CONTINUATION OF THE LIFE OF LORD SOMERS TILL HE WAS DEPRIVED OF THE GREAT SEAL.

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Burnet's account of Lord Somers's appointment as Lord Keeper.

THIS appointment gave satisfaction to all classes of the community, except violent political opponents. "All people," says Burnet, "were now grown weary of the Great Seal's being in commission: it made the proceedings in Chancery to be both more dilatory and more expensive; and there were such exceptions made to the decrees of the Commissioners, that appeals were brought against most of them, and frequently they were reversed. Sir John Somers had now got great reputation, both in his post of Attorney General and in the House of Commons: so the King gave him the Great Seal. He was very learned in his own profession, with a great deal more learning in other professions, in divinity, philosophy, and history. He had a great capacity for business, with an extraordinary temper; for he was fair and gentle, perhaps to a fault, so that he had all the patience and softness, as well as the justice and equity becoming a great magistrate. He had always agreed in his notions with the Whigs, and had studied to bring them to better thoughts of the King, and to greater confidence in him." *

Congratulation by Garth.

Thus was the new Lord Keeper hailed in the "DISPENSARY," by Garth, who, after describing the corruption and oppression which prevailed before the Revolution, exclaims:

"Haste, and the matchless Atticus address,
From Heav'n and great Nassau he has the mace.
Th' oppress'd to his Asylum still repair,
Arts he supports, and learning is his care.
He softens the harsh rigor of the laws,
Blunts their keen edge, and cuts their harpy claws;
And graciously he casts a pitying eye
On the sad state of virtuous poverty.

* Burnet, iii. 148.

> Whene'er he speaks, Heav'ns! how the list'ning throng
> Dwells on the melting music of his tongue;
> And when the power of eloquence he'd try,
> Here, lightning strikes you; there, soft breezes sigh."

May 3. 1693. Installation in Westminster Hall.

On the first day of Easter term following he was publicly installed in his office, and took the oaths in the Court of Chancery in Westminster Hall. * I do not find any account of the procession or of the speeches on this occasion. From the modesty of his nature it is probable that he contrived to avoid the attendance of great nobles and the parade which had given such delight to many of his predecessors, and that, inwardly resolved to do his duty as a Judge, he avoided the ostentatious declaration of his laudable intentions.

Lord Somers as an Equity Judge.

He presided in the Court of Chancery for seven years with the unbounded applause of all discerning and candid men, to whatever class or party belonging. The highest testimony to his merit consists in the utterly frivolous charges which were afterwards trumped up by faction against his judicial conduct. All contemporary accounts concur in praising his industry, his patience, his courteousness, and the uniform serenity of his temper under every provocation of petulance, and of dulness, which is still more trying. We must be contented with the general description we have of his judicial excellence; for there is hardly any record of those displays of learning, ratiocination and eloquence, which might have been handed down to instruct and delight future generations. Vernon professes to report the decisions of the Court of Chancery during the whole of the time that Lord Somers held the Great Seal †, and Peere Williams from 1695 downwards ‡; but their statements of his judgments are most scanty and jejune, and we have only a few scattered notices of cases before him in other reporters.

His judgments ill reported.

His improvement of Equity from the civil law.

I should say, that the great debt of gratitude we owe him as an Equity Judge arises from his introducing and establishing the principles and doctrines of the civil law on the subjects of legacies, trusts, charities, and all others to which they were properly applicable. The early Chancellors were well

* Crown Off. Min. fol. 140.
† 2 Vern. 287—373.
‡ 1 Peere Wms.

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versed in the civil as well as canon law, but they never thought of laying down general rules; and from the time that Equity began to assume a systematic form, Lord Nottingham was the only Chancellor who had ever opened the Pandects, or read any commentators on that immortal code. The habit of referring to the Civil Law which he introduced, had been almost forgotten under his successors,—the narrow-minded Guilford, whose only solicitude was to please the King that he might keep his place — and the boisterous Jeffreys, whose mind was early imbued with a good tincture of Common Law, but who, when he rose to eminence, was too much occupied with politics and drinking to do more than try, as occasion required, to recollect what he had formerly learned. But Somers had kept up the familiar and accurate knowledge of the Civil Law which he had acquired while a student at Oxford. Now, frequently referring to it during the arguments at the bar and in his judgments, he rendered some acquaintance with it indispensable to the practitioners, and he introduced into his Court a fashion for such researches—which lasted a considerable time after he had left it. If, from the training for the Equity bar, more recently introduced, which consists in preparing bills and answers in a draughtsman's office, the pure fountains of Roman jurisprudence are not often approached, the want is not so much felt, after the enlightened system of Equity has been developed and may be found in the Digest of Chancery Reports;—and it is not now very material that "the doctrine of the Court" is supposed to be the invention of Lord Somers, Lord Cowper, or Lord Hardwicke, although these great judges drew it from Ulpian, from Vinnius, or from Voet.*

I will mention as a specimen, that, following the Civil Law, Lord Somers, contrary to some former English authorities, laid down the rule which has been acknowledged ever since, that a bequest of chattels of a durable character, such as pic-

* Let it not be supposed that I mean to throw any peculiar reflection on Equity counsel, who are deserving of all respect; for I have heard it repeatedly observed in the Court of King's Bench,—"according to the saying of Lord Hale, *Qui prior est tempore potior est jure*," and "let us never forget the celebrated maxim of Lord Bacon, *Non potest adduci exceptio ejusdem rei, cujus petitur dissolutio*."

tures, to one for life,—remainder to another,—is valid, on the ground that the use of the thing only shall be construed to pass to the first taker, and not the thing itself; although a gift for life of chattels *quæ ipso usu consumuntur*, as corn or wine, if specific, is a gift of the property, and the old rule shall prevail.*—So he settled the rule, that if there be a legacy to a daughter, on condition that she do not marry without consent of her guardian, the condition shall be construed only *in terrorem*, and, marrying without consent, she shall still have her legacy, unless there be a bequest over to another, in which case, marrying without consent, she loses the legacy.†

One of his decisions reversed.

I do not find that any of Lord Somers's decrees were reversed, except that in *Lawrence* v. *Lawrence*, respecting an implied bar of dower, by acceptance of a bequest of personalty, and a devise of part of the real estate under a will, which devised the residue of the real estate to a stranger. He ruled, according to the intention, that dower was barred, but it was held, on a re-hearing by Lord Keeper Wright, and afterwards, on appeal, by the House of Lords, that dower might still be claimed, as it was not barred expressly.‡

More I cannot venture to say of Somers as a dispenser of Equity. But while he held the Great Seal he had very important judicial duties to perform upon a trial before the Peers for murder, and upon a writ of error from the Court of Exchequer.

He presides as Lord High Steward at the trial of two Peers for murder.

The same Lord Mohun whom he had prosecuted for murder when Attorney General, had been concerned, along with the Earl of Warwick, in an affray in a tavern, in which swords were drawn, and a gentleman of the name of Coote was killed. The two noble lords being capitally arraigned, Somers acted as Lord High Steward, and conducted himself on the occasion with true dignity and propriety. Lord Warwick appearing at the bar, with the gentleman-gaoler of the Tower standing by his side, holding an axe, the edge as

* Hyde *v.* Parrat, 1 P. Wms. 1.; 2 Vern. 331.

† Stratton *v.* Grymes, 2 Vern., 357.

‡ However, Lord Somers's view of making it a question of intention was much favoured by Lord Eldon, in Garthshore *v.* Chailie, 10 Ves. 20.

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yet turned from the prisoner, his Grace said to him, "It ought to be a support to your mind sufficient to keep you from sinking under the weight of such an accusation, that you are to be tried before so noble, discerning, and equal Judges, that nothing but your own guilt can hurt you. No evidence will be received but what is warranted by law; no weight will be laid upon the evidence but what is agreeable to justice; no advantage will be taken of your Lordship's little experience in proceedings of this nature; nor will it turn to your prejudice that you have not the assistance of counsel in your defence as to the fact (which cannot be allowed by law), and their Lordships have already assigned you counsel, if any matters of law should arise."

Lord Warwick was found guilty of manslaughter, and allowed the benefit of his peerage; but Lord Mohun was entirely acquitted, on evidence that he had himself received a wound in trying to part the combatants, and he volunteered a promise, which he literally kept, "not to give their Lordships any trouble of this sort for the future,"—as in his next duel he and the Duke of Hamilton, his antagonist, were both killed on the spot.*

His famous judgment in the "Bankers' Case."

But the grand monument of Somers's stupendous industry, learning, and ability as a Judge, was his celebrated judgment in the "BANKERS' CASE." This arose out of the infamous shutting up of the Exchequer, in the reign of Charles II., whereby the King intercepted, for his own private uses, nearly a million and a half of money, which should have been applied to the repayment of loans to the Government.† After this robbery had ruined many individuals, had destroyed public credit, and had paralysed trade, Charles, as a partial indemnity, granted to the bankers, by way of interest at six per cent. on their debts, certain perpetual annuities, which were charged on the hereditary excise. The dividends were paid till the year 1683, but never after. William III. refusing to acknowledge the obligation as much as James II., the bankers presented a petition, or *monstrans de droit*, to the Barons of the Exchequer, praying for payment of the

* 13 St. Tr. 909—1060.

† Ante, Vol. III. p. 306.

arrears of the annuities, and the Attorney General demurred. Two questions arose—1. "Whether the grant was good?" 2. "Whether this was the proper remedy?" The whole Court held that, generally speaking, the King can alienate or charge any part of the public revenue, although Baron Lechmere doubted whether the hereditary excise was not made inalienable by act of parliament; and they all agreed that this petition was the proper remedy. So they gave judgment for the complainants, directing payment to be made to them at the receipt of the Exchequer. Thereupon the Attorney General brought a writ of error before a Court of Exchequer Chamber, created by a statute of Edward II. to review the judgments of the Barons of the Exchequer, consisting of the Lord Chancellor and the Lord Treasurer, assisted by the common-law Judges. At this time there was no Lord Treasurer, the Treasury being in commission. Almost all the Judges adhered to the judgment of the Court below, except Chief Justice Treby, who thought that the Barons had no authority to order the payment, and, therefore, that the remedy by petition to them was inapplicable.

Somers was inclined to this opinion; but before he would give judgment, or say any thing to commit himself, or finally make up his mind, he entered into a most laborious examination, not only of all the authorities cited at the bar or by the Judges, but employed many weeks in perusing old books and records which had not before been referred to, and he is said to have spent several hundred pounds in collecting them. He finally satisfied himself that the majority of the Judges were wrong, and he supported his own opinion in a written argument, which is happily preserved to us, and which Mr. Hargrave justly describes as "one of the most elaborate ever delivered in Westminster Hall." Having stated the nature of the case, he thus, on very sound principles, begins his reasoning:—"The only question is, whether this be such a remedy as the law allows for recovering from the King the arrears and growing payments of the annual sums in question? If it be not, I am sure none of us ought to make the parties' case better than the law has made it. We must judge of property according to the rules

which the law has fixed, and can make no new ones, nor invent new remedies, however compassionate the case may appear, or however popular it may seem to attempt it." He then gives the history of the royal revenues, and of the Court of Exchequer from the most remote times, with an account of the means afforded for obtaining justice against the Crown, and shows (I think very conclusively) that although the King might alienate or change any property belonging to the Crown, the Barons of the Exchequer had no authority to order the Lord Treasurer, to whom they are subordinate, to make any payment out of the royal revenue, and that the only remedy was a "Petition of right," addressed directly to the Sovereign, who would indorse upon it, *Soit droit fait come il est désiré*; and this being referred to the "Keeper of his conscience," a judgment would be pronounced which, though not enforced by legal process, would effectually procure justice to the petitioner, if he was entitled to relief. But a point was then made that in this Court of Exchequer Chamber the Judges were co-ordinate with him, who was only to be considered their president or chief, and therefore that he could not reverse the judgment against the opinion of the majority of them. He therefore put this question to them, "Whether, as this Court is constituted, judgment ought to be given according to the opinion of the greater number of the Judges who are by the Lord Chancellor and Lord Treasurer called to their assistance, notwithstanding they themselves are of a different opinion?" Three declared that the opinion of the majority of the Judges ought to prevail, and seven the contrary. The Lord Keeper said that, on this point, he agreed with the majority, and thereupon he reversed the judgment of the Barons of the Exchequer. A writ of error on this reversal was brought in the House of Lords, where the reversal was reversed, and the original judgment was restored. But (as we shall see) Lord Somers's political influence was then declining, and in those days, all the Lords voting on appeals and writs of error, the result was often produced by canvass or by political bias. Seven temporal and four spiritual Peers (among them Burnet, Bishop of Salisbury) protested against this reversal. It seems at last to have

been made a party question.* Indeed, Somers was suspected of a wish to please the King, but his argument is a sufficient refutation of this calumny. On the other side there was much solicitation, the stake being unprecedently great, and many powerful individuals being interested in it.—The matter was finally compromised by a parliamentary grant of half the amount demanded.†

Practice established of granting divorces by act of parliament.

As the granting of divorces in the House of Lords is rather a judicial than a legislative act, I may properly here mention that, while Somers presided on the woolsack, the practice was established of a parliamentary dissolution of marriage by reason of the adultery of the wife. The first case of this sort which came before him, was that of the infamous Countess of Macclesfield, the mother of Savage; and, by the Chancellor's advice, the adultery being clearly established, the bill passed, although there had not been a divorce *à mensâ et thoro* in the Ecclesiastical Court.‡ This was followed by the Duchess of Norfolk's case. She had twice defeated an application to parliament by the Duke for a divorce; but on fresh evidence of her guilt being adduced, together with the verdict of the jury in the Duke's action against her paramour, Lord Somers advised that the relief prayed for should be granted, and the bill passed.§ It is much to be regretted that he did not establish a judicial tribunal, with power to dissolve marriage on proof of the wife's adultery, and that he did not rescue the English nation from the reproach of the action for "criminal conversation," whereby an English husband seeks a pecuniary benefit from his own dishonour.

Feb. 1699.

Lord Somers gave high satisfaction in disposing of the proper judicial business of the House upon appeals and writs

* The Jacobites rejoiced much in this reversal, and "downright Shippen," in his doggerel, thus insulted Somers:

"An unjust judge, and blemish of the mace—
Witness the bankers' long-depending case."

Yet by impartial persons the judgment was so much admired, that the compliment to it was eagerly repeated: "The Chancellor's arguments are like geometrical stairs, supporting each other."

† 12 & 13 W. 3. c. 12, 13. See 14 St. Tr. 1—114.

‡ 5 Parl. Hist. 1173. Dr. Johnson, in his "Life of Savage," incorrectly states that "the Countess confessed that Earl Rivers was the father of her child;"—but she resolutely asserted her innocence.

§ Macqueen, 572.; Lords' Journ.

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March, 1699.

of errors, and he acquired much credit by vigorously maintaining the jurisdiction of the English House of Lords over appeals from the Irish Courts of Equity.*

He was likewise of great service in enforcing the attendance of the Judges as assistants to the Peers. While he remained a Commoner, and therefore presided on the woolsack only as Speaker, there was cast upon him the painful duty of reprimanding these venerable sages of the law for negligence. On the 8th of February, 1694, an order was made that "all the Judges do attend this House to-morrow, immediately upon the rising of the respective Courts, in Westminster Hall, and do not go away until the rising of the House." The Judges attended accordingly on the following day, and were thus addressed by the Lord Keeper (in pursuance of a previous instruction from the House): "I am commanded to tell you, that you have the honour to be the assistants here; and the House takes notice of your great negligence in your attendance. You have had sometimes warning given you, though not with so much solemnity as I am directed now to do it. If this fault be not amended for the future, the House will proceed with great severity against you." This rebuke seems scarcely to have answered its purpose; for, on the 3d of December, 1694, it was "ordered that all the Judges do attend this House to-morrow, at twelve of the clock, except such whose attendance is at present necessary in the courts of law or equity; and that the reprimand given to the Judges the 9th of February last be then repeated to them." On the following morning "the Lord Keeper, pursuant to the order of yesterday, repeated to the Judges the reprimand before administered to them." Unluckily, we have no further account of this ceremony; but it proved effectual, as the Judges appear ever after to

Lord Keeper Somers reprimands the Judges for not attending the House of of Lords.

* The Irish House of Lords had claimed this jurisdiction, and had committed John Campbell to prison for a breach of privilege, in serving the Bishop of Derry with an order of the English House of Lords.[1] My clansman was released; and the attempt was renewed by the Irish House of Lords in 1717; but they did not carry their point till 1782.

[1] Lords' Journ.

have given entire satisfaction to the House by their diligence and assiduity.*

Having followed Somers as a Judge nearly to the close of his official career, we must now regard him in a character in which he drew much more public attention—as a member of the government.

Dispute between the King and Somers about judicial patronage.

While he continued in office the administration of affairs at home was chiefly intrusted to him. The King conducted his diplomatic negotiations nearly as much as his campaigns without ministerial advice, but he was rather indifferent as to civil appointments and domestic measures, except in as far as they bore upon his foreign policy. Yet it is a curious fact that Somers had a violent *fracas* with his royal master immediately after his appointment, and this led to the cordiality which subsequently prevailed between them. The Great Seal having been in commission since the commencement of this reign, William, without consulting the Lords Commissioners, had personally exercised all the judicial patronage connected with it, and thought he was still to follow the same course. The very day after the transfer of the Great Seal he set off for Flanders to fight the battle of Landon, and not a word being said to the Lord Keeper about filling up vacancies then existing in legal offices, sent him orders by the Earl of Nottingham, the Secretary of State, as if he had been a mere clerk in a public office,—to make out patents creating Sir William Rawlinson, Chief Baron of the Exchequer; Sir William Wogan, Chief Justice of Chester; and Mr. Ward, Attorney General. Somers resolved not to hold the Great Seal on such terms, believing that the King erred from ignorance of our customs, and, wishing to instruct him in his duties,—while William was still at Harwich, waiting for a fair wind, sent to him by a

* *Lords' Journals.*—*Macqueen's Practice of the House of Lords*, 41. At this time, the Judges were expected to attend the House of Lords from day to day, without any special summons, for the purpose of carrying messages to the House of Commons, and giving their advice on any question which might arise. Now they are only employed as messengers on very important occasions, as to carry to the House of Commons bills respecting the royal family; and they are specially summoned when it is wished that they should advise the House on questions of law arising out of judicial proceedings or bills pending.

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special messenger the following respectful, manly, and dignified remonstrance:

"March 27. 1693.

Lord Keeper's letter to the King tendering resignation of Great Seal.

"May it please your Majesty,

"It is no small misfortune to me that before I enter upon the execution of the great trust with which your Majesty has been pleased to honour me, I should find myself under the necessity of giving your Majesty a trouble in relation to it.

"Nothing but the utmost concern for your service could have brought me to do it now, or shall ever hereafter lead me to do the like.

"My Lord Nottingham, since your departure, has told me Sir William Rawlinson is to be Chief Baron, Sir William Wogan Chief Justice of Chester, and Mr. Ward Attorney General.

"Your Majesty having laid no commands on me relating to any of them, I think it my duty, before I act any thing in this matter, with all humility, to represent to your Majesty what consequence it may have.

"The lawyers being spread over every part of the kingdom and having a great influence among the people, the method used to unite them in their service to the Crown, had been by obliging them to a dependance upon the Great Seal for their promotion where they merited. This has always given a weight to that office in public affairs, and, if I understand your Majesty right, the making the Great Seal thus considerable was one of the effects you expected from placing it in a single hand. But I submit to your Majesty how far this is likely to succeed, or any other of your Majesty's ends be answered, if such eminent offices are disposed of in such a manner at my entrance on this charge.

"I do not meddle on any consideration of the persons themselves, though I know not but your Majesty might expect it from me; and it may not be improper to observe to your Majesty how much it has been to the honour of your reign, that your Judges have been of known ability in the law, and that it is the particular concern of the Crown

that the Chief Baron should be experienced in the course of the Exchequer, and knowing in the Common Law.

"As to the place of the Attorney, your Majesty having been pleased to express your purpose to advance Sir Thomas Trevor to that office to several persons, it was not in my power to make it a secret; and your Majesty having divers times commanded me to find out a Solicitor, I was under the necessity of proposing it to Mr. Ward, whom I thought a fit person, before I could name him to your Majesty, and so that could not be concealed.

"This being the case, let me humbly offer it to your Majesty's consideration whether, if the passing these patents must be the first use I am to make of the Seal, it can be supposed I have that credit which ought always to go along with it, and without which it is impossible it should reach any part of what your Majesty aimed at in the change.

Your Majesty will bear me witness that I had a just prospect of the difficulties of this charge, and that nothing but a perfect resignation to your Majesty, together with a gracious assurance of your support, engaged me to undertake it. Upon this support I do and must depend, and whatever your Majesty might expect from the Seal in my hand must fail if there be any the least want of it.

"Having discharged my duty in this faithful representation to your Majesty, I lay the Seal and myself at your Majesty's feet, with an entire submission to your will and pleasure.

"I am,
"May it please your Majesty,
"Your Majesty's most dutiful,
"Most obedient, and most humble
"Subject and Servant,
"J. SOMERS."

Cordiality between them restored.

The result was most creditable to both parties. William declined to accept the tendered resignation of the Great Seal; disclaimed any intention to slight one who had been so useful to his cause, and for whose learning, ability, and integrity, he had such respect; and expressing a hope that the persons pro-

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posed for the vacant offices in the law, who had been all strongly recommended to him, might be considered not unfit, promised that in future all such appointments should be made by the advice of the Lord Keeper. The patents for Rawlinson, Wogan, and Ward, were accordingly made out, — and William was faithful to his engagement. The office of Attorney General soon again becoming vacant, Sir Thomas Trevor, the Lord Keeper's protégé, was appointed to it, and the Great Seal was restored to all its ancient consequence. Ever after there was the most perfect good understanding between the King and his minister,—the charge against the latter subsequently being that he had too implicitly complied with the royal will.

Part taken by Somers in Parliamentary proceedings.

Down to 1697 Somers refused to accept a peerage, and the fashion of the Lord Keeper addressing the two Houses at the commencement and close of the session had passed away, the King in person delivering a speech, for which his ministers were considered responsible. For some years, therefore, Somers, sitting on the woolsack in the House of Lords, had only, as Speaker, to put the question, and his name seldom appears in the accounts of parliamentary proceedings, although parliament, which, in the eight years immediately before the Revolution, sat only two months, had now regular sessions, lasting a considerable portion of every year.* But taking no part in debate, he regulated, in a great degree, the resolves of the Upper House, and the King was implicitly guided by his opinions in giving the royal assent to bills, or rejecting them by the exercise of the royal veto, which had not yet become a dormant prerogative of the crown.

The first very important deliberation they had together was with respect to the liberty of the press. Notwithstanding Milton's inimitable defence of "Unlicensed Printing†," even

* Under date 2d May, 1693, when the two Houses met according to the prorogation — that they might be again prorogued, there is this entry in the Journals of the Lords: "This day Sir John Somers, Knight, Lord Keeper of the Great Seal of England, first sat as Speaker in the House of Peers." He was afterwards enumerated at the top of the list of Peers present as "Dom. Cust. Mag. Sig." till he was made Chancellor and a Peer in 1697.

† "Areopagitica; a Speech for the Liberty of unlicensed Printing, — to the Parliament of England."

at the Revolution the public mind was not prepared for the abolition of the restrictions which had been imposed upon authors, first by proclamations and decrees of the Star Chamber, and then by statutes. The licensing act, which had inadvertently been suffered to expire in 1679, and had been revived by James II.'s parliament in 1685, was in 1692 continued till the end of the then next session of parliament.* Was the experiment to be made, of trusting to the *punishment* of such as publish any thing dangerous to the public or injurious to individuals? William, who had seen the harmlessness of a free press in his own country, took the liberal side; but the few Tory members of the Cabinet very plausibly urged that *prevention* was better than punishment, and that it was the duty of the state to restrain as far as possible from the publication of libels as from the commission of other crimes. Somers prevailed by pointing out not only the vexatiousness, but the utter inefficiency of the desired regulations, in spite of which there had been more libels published upon the government and on private character since the Revolution than during any former period of our history. "Unlicensed printing" was thus for ever established in England, and now we have only to be watchful that the press be not itself turned into an engine of tyranny.†

Expiration of the licensing Act.

Liberty of the press.

The next subject of debate in the Cabinet was the "Place Bill." The disappointed Tory party combining with a few disappointed individual Whigs, and a section of politicians actuated by disinterested but absurd notions of government, had passed a bill by which no one holding any place of profit under the Crown should be permitted to sit in the House of Commons. The great argument for it was, that the misrule in Charles II.'s reign was chiefly to be ascribed to his "Pensioners' Parliament." But wise men clearly saw that though the House of Commons might be corrupted by a majority of its members being placemen, it could not possibly exercise the functions vested in it by the constitution, and that it would soon become useless and despised, if all the ministers of the Crown

He advises the King to veto the Place Bill.

* Stat. 13 & 14 Car. 2. c. 35. 1 Jac. 2. c. 17. 4 & 5 W. & M. c. 24. s. 14.
† See Hall. Const. Hist. iii. 226.

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were excluded from it. Somers, therefore, manfully concurred in the opinion that the Bill should be stopped by the royal VETO, and when its title was read in the presence of the two Houses, their Majesties being on their thrones, the answer was "Le Roy et la Reyne s'aviseront."*

The Triennial Bill, once vetoed, receives royal assent.

In the end of the same year the "Triennial Bill" a second time passed both Houses. The King had before vetoed it, and Burnet says, it was to soften the distaste which this proceeding gave that Somers was appointed to the Great Seal.† Most extravagant notions were entertained of the benefits to be derived from the bill, which many thought would produce complete purity of election, would insure the return of independent members, would render all proceedings in parliament patriotic and wise, and would renew and perpetuate the Golden Age in England. ‡ We must remember that there were many living who had known one parliament last nearly eighteen years, and who had seen years elapse filled with abuses, without any parliament sitting to redress them. The King was still hostile to the measure, recollecting that the Triennial Bill in Charles I.'s time was the signal for the civil war. But Somers pointed out to him that this bill was free from the obnoxious clauses which had been assigned by Lord Clarendon as the reasons for repealing that act; that its provisions were perfectly consistent with the full exercise of the prerogative in a limited monarchy; and that, in the temper in which the nation then was, it could not be again rejected without making many, hitherto well affected to him, turn their longing eyes to St. Germaine's. The royal assent was accordingly given to the bill §, and, although much disappointment was experienced (as after the passing of our Reform Bill), it worked well till the accession of George I., when a House of Commons, which had been elected for three years, resolved to sit for seven.

Dec. 1690.

Death of Queen Mary.

Queen Mary dying soon after the Triennial Bill was passed, the Lord Keeper successfully exerted himself to bring

* 5 Parl. Hist. 828.
† O. T. iii. 143.
‡ O. T. iii. 183.
§ 6 W. & M. c. 2.

about a reconciliation between the King and the Princess Anne, who had long been estranged from the Court. Entering the royal closet, he found William in such an agony of grief as not even to be conscious of his presence. When Somers had broken silence, and regretted the feuds in the royal family, the King said, "My Lord, do what you will. I can think of no business." By the agency of Somers an interview was arranged, in which the King received the Princess with cordiality, and informed her that the palace of St. James's should be appropriated for her future residence. The Lord Keeper had still the painful duty to discharge of delivering to the King, at Kensington, the address of condolence voted by the Lords on this melancholy occasion, and receiving the King's simple and pathetic answer: "I heartily thank you for your kindness, but much more for the sense you show of our great loss, which is above what I can express."

Dec. 31. 1694.

New Great Seal.

William now bearing undivided sway, nominally as well as really, a new Great Seal was immediately ordered, suited to the alteration in the royal style, and was delivered to the Lord Keeper.* But Mary having considered it her duty, as a good wife, not to interfere in the administration of the government, except in matters of form, this melancholy event made no difference in his position.

Bill for regulating trials for high treason.

In 1695 Lord Keeper Somers gave his countenance to the bill for allowing a full defence by counsel, together with a copy of the indictment, and a list of the jurors and the witnesses, in cases of treason; but it is doubtful whether it would have passed if Lord Ashley, afterwards Earl of Shaftesbury, and author of the "Characteristics," had not broken down while delivering, in the House of Commons, a set speech in support of it, and being called upon to go on, had not electrified the House by observing, "If I, sir, who rise only to give my opinion on a bill now pending, in the fate of which I have no personal interest, am so confounded that I am unable to express the least of what I proposed to say, what must the condition of that man be who, without any assist-

* Books of Privy Council, 1694.

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Nov. 1695.

ance, is called to plead for his life, for his honour, and for his posterity?" * A clause was added in the Lords, (as some very unwarrantably say, on the suggestion of Somers, with a view to defeat the bill,) "that on the trial of a peer or peeress for treason, all peers should be summoned, and be entitled to sit,"—to which it was thought the Commons would not agree. But why should it be supposed that the Commons would object to peers being fairly tried as well as themselves? —and there is no authority for asserting that Somers disapproved of the bill. The royal assent was given to it without any hesitation. †

Reformation of the coinage.

The Lord Keeper took an active part in what was considered one of the great measures of William's reign—the reformation of the monetary system by a recoinage; and he suggested, and strongly urged, a plan by which the clipping of money would have been instantly stopped, and several millions would have been saved to the nation. ‡

May, 1695. Somers refuses a peerage.

There was now a strong desire that he should take part in the debates in the House of Lords, and the King actually made out a warrant for conferring a peerage upon him. This was enclosed to him in a letter from the Duke of Shrewsbury, who was supposed to have great influence over him, and who wrote, "The King is really convinced that it is for his service that you should accept of a title. I beg the answer I may have may be a bill for the King's signing. §

* 5 Parl. Hist. 966. † 7 W. 3. c. 3.

‡ "The Lord Keeper Somers did indeed propose that which would have put an effectual stop to clipping for the future: it was, that a proclamation should be prepared with such secrecy as to be published all over England on the same day, ordering money to pass only by weight; but at the same time, during three or four days after the proclamation, all persons in every county that had money should bring it in to be told and weighed; and the difference was to be registered, and the money to be sealed up, to the end of the time given, and then to be restored to the owners: and an assurance was to be given that this deficiency in weight should be laid before the parliament, to be supplied another way, and to be allowed them in the following taxes." The King liked the proposal; but it was overruled, from an apprehension that it might give a shock to commercial credit.—*Burnet*, iii. 203.

§ The course of making out a patent of peerage is, that upon warrant under the sign manual, and countersigned by a secretary of state, a bill is prepared on parchment by the Attorney General, which is a draught of the grant. This being superscribed by the Sovereign passes under the Privy Seal, and then comes the patent under the Great Seal—before which the peerage is not completed—although, on kissing hands after the warrant, a member of the House of Commons about to be ennobled vacates his seat. Anciently a barony was created

As for arguments, I have used all I have already, and by your objections you may give me leave to tell you, you are as partial and unreasonable with too much modesty as some are with too much ambition."* Somers still resolutely refused the offered elevation.

In the King's absence he is at the head of the regency as Lord Justice.

However, he had a temporary dignity thrust upon him. William, after the death of Mary, still going abroad yearly during the campaigning season, he, by virtue of the prerogative, appointed under the Great Seal "Lords Justices," who might be considered the successors of the "Grand Justiciars," in the times of the Norman Kings and of the early Plantagenets,—administering the government in his absence. The Princess Anne, to her great mortification, was excluded from the regency. The Archbishop of Canterbury was nominally at the head of the Lords Justices who were appointed, but the Lord Keeper who came next, had the duties of the office cast upon him almost exclusively. If four of them were together, they were entitled to the honours of royalty. But Somers ever as much as possible avoided parade, and in the exercise of authority was desirous of acting under the express directions of the King.†

His removal of magistrates

Upon the discovery of the plot to assassinate William, in the beginning of the year 1696, the Lord Keeper followed a course

without patent by a writ of summons to parliament, but was not acquired so as to descend to heirs till the Baron had taken his seat in the House of Peers. Such a peerage descends to heirs female as well as male, and is usually called "a Barony in fee."

* Hardw. St. Pap. ii. 429. In the prospect of the accession of the House of Hanover, such a jealousy was there of the Sovereign being absent from the realm, that the Act of Settlement, 12 & 13 W. 3. c. 2., provided "that no person who should thereafter come to the possession of the Crown should go out of the dominions of England, Scotland, or Ireland," without consent of parliament. Queen Anne never was or wished to be abroad; but this was repealed by 1 Geo. 1. st. 2. c. 51.; and Hallam is of opinion that the first two Georges, by their frequent visits to Hanover, made a bad return for the waiver of the condition on which they were invited to the throne. On going beyond the sea, they invariably, according to ancient usage, appointed a Regent or Lords Justices to exercise the royal authority in their absence. George III. was never more than one hundred miles from London, the place of his birth. George IV. was only once abroad, which was in the year 1821, and he then appointed Lords Justices. William IV. never was abroad after he came to the Crown. Queen Victoria going to the Continent in 1843, no provision was thought necessary for the exercise of the royal authority in her absence; and the appointment of Lords Justices may now be considered to have fallen into desuetude. See discussion on this subject in the House of Lords, 7th August, 1845.

† He was a Lord Justice in 1695, 1696, 1697, 1698, and 1699.

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on the assassination plot.

which was not much complained of at the time, but was afterwards made a ground of heavy charge against him. An association for the protection of the King's person being formed, he announced and acted upon a resolution to remove from the commission of the peace all magistrates all over England who refused to sign it, — whereby many Jacobites and ultra Tories were dismissed. Such a punishment for merely not joining in a voluntary ebullition of loyalty, does seem a very arbitrary, though not an illegal proceeding; but we must recollect that after the death of the Queen, who, if the pretended Prince of Wales could be considered spurious, was the next heir to the crown, there was a very general disposition to question William's title, notwithstanding all he had done for the nation, and that to preserve the public tranquillity, measures were absolutely necessary, and therefore defensible, which would be justly condemned in our quiet times.*

Fair trial of Charnock and others for treason.

The trial and execution of Charnock, King, and Heyes, for high treason, which followed, under the direction of the Lord Keeper, could not be censured. They were regularly brought before a jury; they were fully heard in their defence, and a clear case was made out against them. The only circumstance which excites any sympathy in their favour is their generous anxiety to exempt James II., who was then at Calais planning an invasion to recover his crown, from the suspicion of being engaged in their plot.†

Infamous attainder of Sir John Fenwick.

But the proceeding against Sir John Fenwick brings some reproach on the memory of Somers, and shows that after the principles of justice have been for ages violated in any country, they cannot suddenly be completely restored to efficiency, the moral perceptions of the most humane and enlightened individuals continuing for a time to be blunted. It appeared, by an intercepted letter from Sir John Fenwick to his wife, that he had been engaged in the plan for an invasion from France to restore King James, and the Lords Justices directed that he should be brought to trial for high treason, but the witnesses who were expected to prove his guilt left

* 2 Ralph, 843. † 12 St. Tr. 1377—1466.

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the kingdom, and there was no sufficient legal evidence against him. Thereupon the government resorted to the proceeding which had been invented in the reign of Henry VIII. for perpetrating murder, and which had brought such reproach upon the Stuarts, and upon the republican party — A BILL OF ATTAINDER. This was violently opposed in both Houses, and was carried in the Lords only by a majority of sixty-six to sixty.* Yet it received the royal assent, and the prisoner refusing to make the disclosures which were required of him, he was executed — throwing lustre on the Jacobite cause by his fidelity to his friends, and the calmness and constancy which he displayed. †

Somers patronises Newton and Locke.

The Lord Keeper is much to be commended for the liberal zeal he displayed to see the highest talents in every department employed in the public service. He assisted Montague in the appointment of Newton as Warden of the Mint, to which may be ascribed the great restoration of the currency by the recoinage; and on his recommendation Locke was nominated a Lord of Trade, to carry into effect the sound commercial principles which this great philosopher had propounded in his writings. Unfortunately Locke's health was so much impaired, that he was soon obliged to leave the duties of his office and fly to his country retreat at Oates. After he had been there some weeks, he wrote the following letter to the Lord Keeper: —

"MY LORD,

Jan. 7 1697. Letter of Locke to Somers.

"Some of my brethren, I understand, think my stay in the country long, and desire me to bear my part, and to help to despatch the multitude of business that the present circumstances of trade and the plantations fill their hands with. I cannot but say they are in the right; and I cannot but think, at the same time, that I also am in the right to stay in the country, where all my care is little enough to preserve those

* The Bishops voted, although this was *causa sanguinis*, and were 12 to 9.

† 13 St. Tr. 537—758.; 5 Parl. Hist. 998—1156. Although the attainder of Fenwick was supported by Bishop Burnet, and many humane and upright men, Lord Keeper Somers must be held principally responsible for it. Fortunately he had nothing whatever to do with the warrant for "the massacre of Glencoe," which is the great reproach to the reign of William, and which, I am sorry to say, brought deserved obloquy upon the name of CAMPBELL.

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small remains of health which a settled and incurable indisposition would quickly make an end of any where else. There remains, therefore, nothing else to be done, but that I should cease to fill up any longer a place that requires a more constant attendance than my strength will allow; and to that purpose I prevail with your Lordship to move his Majesty that he would be pleased to ease me of the employment he has been so graciously pleased to honour me with, since the craziness of my body so ill seconds the inclination I have to serve him in it, and I find myself every way incapable of answering the ends of that commission. I am not insensible of the honour of that employment, nor how much I am obliged to your Lordship's favourable opinion in putting me into a post which I look upon as one of the most considerable in England. I can say that nobody has more warm wishes for the prosperity of his country than I have; but the opportunity of showing those good wishes, in being any way serviceable to it, I find comes too late to a man whose health is inconsistent with the business, and in whom it would be folly to hope a return to that vigour and strength which such an employment I see requires. It is not without due consideration that I represent this to your Lordship, and that I find myself obliged, humbly and earnestly, to request your Lordship to obtain for me a dismission out of it."

The Lord Keeper thus replied: —

"Sir,

Jan. 26. 1697. Somers to Locke.

"My great fatigue, joined with a very great indiposition, must make my excuse for being so slow in returning an answer to your very obliging letter. I am very sorry for your ill health, which confines you to the country for the present; but now you will have so much regard to yourself, your friends, and your country, as not to think of returning to business till you are recovered to such a competent degree as not to run the hazard of a relapse. As to the other part of your letter which relates to quitting the commission, I must say, you are much in the wrong, in my opinion, to entertain a thought of it; and I flatter myself so far as to believe I could bring you over to my sentiments if I had the

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happiness of half an hour's conversation with you. These being my thoughts, you cannot wonder if I am not willing to enter upon the task you propose for me to say something to the King of your wishes. But when the new commission is made, and the establishment fixed, and the parliament up, and you have had the opinion of your friends here, I will submit to act as you shall command me. In the mean time, give me leave to say that no man alive has a greater value for you, or is with more sincerity than myself, Sir,

"Yours, &c."

Locke, however, was firm to his purpose; and, anticipating a personal interview, says gracefully, "then I, who am so much in your favour, shall not alone, of all the subjects of England, apprehend that, upon a fair hearing, your Lordship will not allow the EQUITY of my case." The resignation was accordingly accepted. Feb. 1. 1697.

In the following year, Locke's health having improved, another effort was made to press him into the public service; and the King, at the request of the Lord Keeper, sent for him, in the hope of overcoming his scruples. Of this interview the philosopher gives an account in a letter to his friend:—

"Sunday, in the evening, after I had waited on the King, I went to wait upon your Lordship, it being, I understand, his Majesty's pleasure I should do so before I returned hither. His Majesty was so favourable as to propose the employment your Lordship mentioned; but the true knowledge of my own weak state of health, made me beg his Majesty to think of some fitter person, and more able to serve him in that important post,—to which I added my want of experience for such business. I must beg your Lordship, for the interest of the public, to prevail with his Majesty to think on somebody else, since I do not only fear, but am sure, my broken health will never permit me to accept the great honour his Majesty meant me. As it would be unpardonable to betray the King's business, by undertaking what I should be unable to go through; so it would be the greatest madness to put myself out of the reach of my friends during the small time I am to linger in this world, only to die a little more rich, or a little Jan. 28. 1698.

Locke's resolution to retire from public life.

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more advanced. He must have a heart strongly touched with wealth or honours, who, at my age, and labouring for breath, can find any great relish for either of them." *

The wise resolution of the philosopher was not further combated, and he was probably of more use to the public in still being allowed to prosecute his abstract inquiries than if occupied with the details of official business. But we must honour the desire to advance men of literary reputation to employments in the state,—which has been so rarely manifested in England.

Somers raised to the title of Lord Chancellor, and created a peer.

Somers himself, careless about honours, having, on the 22d of April, 1697, surrendered the Great Seal, it was returned to him by the King with the title of Lord Chancellor †, and the same day he was created Baron Somers, of Evesham, in the county of Worcester.

Grant of lands by the King to Somers.

To enable him to support his dignity, the King, who still possessed the old prerogative (taken away from his successor) of alienating the royal hereditary revenues, granted to Lord Somers and his heirs the manors of Reigate and Howleigh in Surrey, and 2100*l.* a year out of the fee farm rents of the Crown. ‡

Members' Property Qualification Bill rejected.

The first measure on which he had to express his opinion as a Peer was the bill sent up by the Commons, requiring property in land as a qualification to be returned representative to parliament for any county, city, or borough,—the object being to weaken the Whig party, by excluding men who, like Sir Andrew Freeport, were engaged in commerce, and were of liberal politics. Lord Somers contended that "the nation might reasonably be left to their freedom in choosing their representatives in parliament; that it seemed both unjust and cruel if a poor man had so fair a reputation as to be chosen, notwithstanding his poverty, by those who were willing to pay him wages, that he should be branded

* Lord King's "Life of Locke," 244—248.

† London Gazette, 22d April, 1697. "His Majesty in Council received the Seals from the hands of the Right Honourable Sir John Somers, Knight, Lord Keeper thereof, and was pleased to return it to him again, with the title of Lord Chancellor of England."

‡ These grants seem to have created a good deal of jealousy and envy, but Somers conducted himself respecting them with great independence.— See Letter from Secretary Vernon to the Duke of Shrewsbury, 1 Vernon's Corr. 223.

with an incapacity because of his small estate; that corruption in elections was to be dreaded from the rich rather than from the poor; and that, at all events, it was absurd that land should be the only property recognised as a qualification." The bill was rejected.*

Great prosperity of Somers.

Lord Somers had now reached his highest pitch of worldly prosperity. He was not only the favourite of the King, but he could influence a decided majority in both Houses of Parliament, and his general popularity was such that the High Church party expressed a wish that he were theirs. The Tory fox-hunters could say nothing against him, except that he was "a vile Whig;" the merchants celebrated him as the only Lord Chancellor who had ever known any thing of trade or finance; the lawyers were proud of him as shedding new glory on their order, and so much was he praised for his taste in literature, and his patronage of literary men, that all works of any merit in verse or prose were inscribed to him. Thus was he addressed by Addison in the Dedication of his Poem in praise of King William:—

Addison's verses on Somers.

"If yet your thoughts are loose from state affairs,
Nor feel the burden of a nation's cares,
If yet your time and actions are your own,
Receive the present of a muse unknown:
A muse that in adventurous numbers sings
The rout of armies and the fall of kings,
Britain advanc'd, and Europe's peace restor'd
*By Somers' counsels* and by Nassau's sword.
"To you, my Lord, these daring thoughts belong,
Who help'd to raise the subject of my song;
To you the hero of my verse reveals
His great designs, to you in council tells

* See Tind. Rap. xiv. 373. During the high Tory administration of Queen Anne, the bill was again introduced and passed (9 Anne, c. 5.); but on this one point I think the Chartists are right, and when a member of the House of Commons I voted in their favour. Let there be a proper qualification fixed for the *electors*, and they may be safely left to their free choice. No harm whatever would follow from the introduction of a few operatives into the House of Commons; but, in truth, there would be no chance of such an occurrence. There never has been any property qualification for the representative in Scotland; and the English fashion, attempted to be introduced at the time of the Reform Act, was strongly and successfully resisted by us. Yet, whatever objections the Scottish members may be liable to, all that I have ever known could easily have produced qualifications, if the statute of Anne had extended to them.

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His inmost thoughts, determining the doom
Of towns unstorm'd, and battles yet to come.
And well could you *in your immortal strains*
Describe his conduct and reward his pains:
But since the state has all your cares engrost,
And poetry in higher thoughts is lost,
Attend to what a lesser muse indites,
Pardon her faults, and countenance her flights." *

At this period of his career the levee of the Lord Chancellor was almost as crowded as that of the King; and he could not have been insensible to the popularity he enjoyed with all ranks of his fellow citizens. But, what above all yielded him the most enviable gratification, was the power which he enjoyed from his own great income, and from a just application of a portion of the funds of the state, to relieve distress, and to encourage rising merit struggling with poverty. He not only liberally assisted literary men of his own country, but he extended his patronage to foreigners.

Present by Somers to Bayle.

About this time Bayle's "Historical and Critical Dictionary" being about to appear, and there being much talk of the learning and of the poverty of the author, Lord Somers wrote to a friend in Holland, intimating that "if Mr. Bayle would accept of his patronage for his Dictionary, he had 150 guineas at his service." Bayle, for a supposed plot in favour of France, having been deprived by William of a pension, and turned out of his professorship at Rotterdam, answered, that, although he stood in need of the present offered to him, he could not bring himself to pay that compliment to a Lord who was minister to a Prince of whom he had such reason to complain.† The Chancellor found no difficulty in procuring the acceptance of a like sum by a parson of profligate morals,

How to get rid of a profligate parson.

* This versification, if indifferent, was the best then going; for the star of Dryden was disappearing in the west, and that of Pope had not yet begun to illumine the eastern horizon.

As a specimen of the prose dedications, I will copy a few sentences of that by Edmund Gibson of a new edition of Camden's Britannia:

"She (Britannia) still remembers how they all blessed you for your defence of her distressed Prelates, and how upon your Lordship's advancement a general joy ran through the whole family: but that a more particular satisfaction appeared among the learned to see the honour conferred upon a leading member of their own body. She was pleased to hear them say that by such promotions, they, as well as their neighbours, might at last have their Richelieus and Colberts."

† See Biog. Brit. 3749.

to whom it was offered on condition that he would cease to come to his levee.* A more unmixed good action was his procuring a pension for the widow of Archbishop Tillotson, from whose disinterestedness she had been left in great distress.

Somers the patron of Addison.

But his greatest glory was his patronage of Addison, to which we are indebted not only for the "Travels in Italy," and the "Dialogue on Medals," but to the enlarged views and exquisite polish which distinguished the other compositions of this inimitable writer. Influenced much less by the flattering lines which Addison, then unknown, had addressed to him from Oxford, than by the desire to assist in fitting for the public service one so likely to bring credit to the Whig party, and to confer benefits on his country, he eagerly concurred with Montague, the Chancellor of the Exchequer, in enabling the aspirant diplomatist to fit himself for the public service by a residence in France, and by visiting foreign courts. The consequence was that an annuity of 300*l.* was settled upon him, and paid to him till the King's death. To this kindness in a considerable measure may be ascribed the success of Addison's subsequent career.†

Libel on the Lord Chancellor taken up by the House of Lords as a breach of privilege, and ordered to be burnt by the common hangman.

One libel appeared upon the Lord Chancellor, which only added to the splendour of his reputation. This was written by a son of the Earl of Abingdon, who had been engaged in a Chancery suit, and who grossly reflected upon a decree pronounced against him. But the House of Lords took up the matter as a breach of privilege, and sent a message by the Lord Chief Baron and Mr. Justice Neville to the Commons, requesting the attendance of one of their members upon the subject. Thereupon, Lord Abingdon, in the name of his son, begged pardon of the Lord Chancellor, and the House for the offence committed. The apology stayed further proceedings, beyond ordering the libel to be burnt in Palace Yard by the hands of the common hangman.‡

* Biog. Brit. 3749.

† He must otherwise have taken orders; and if we may judge by his very worst production, his "Evidences of Christianity," he would not much have distinguished himself as a divine. Montague therefore might say, with a free conscience, "I am called an enemy to the church; but I will never do it any other injury than keeping Mr. Addison out of it."

‡ Lords Journ. xv. 240. 247.

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Standing order against publishing any of the judicial decisions of the House of Lords.

I may here mention the only other question of "privilege" which arose while Lord Somers held the Great Seal, and, considering his liberality and good sense, we cannot but be astonished at the manner in which it was treated. The House of Lords being the Court of Appeal in the last resort, its decisions settle the law, and are binding on all inferior tribunals. It being deemed material that they should be made known, Sir Bartholomew Shower, an eminent barrister, published a collection of them, still cited under the title of "Shower's Parliamentary Cases," but some of them being freely commented upon, the publication was voted to be a breach of privilege, and a standing order was made, which has never yet been repealed, whereby it was "Resolved, that it is a breach of the privilege of this House for any person whatsoever to print or publish in print any thing relating to the proceedings of this House, without the leave of this House." The prohibition was thus made to extend not only to the publication of political debates, but to judgments upon appeals pronounced when the House, as a court of justice, sits *foribus apertis*.*

Feb. 27. 1698.

Beginning of Lord Somers's troubles.

After a splendid interval of no long duration from the time when Somers was made Lord Chancellor and a Peer, he was almost constantly involved in political troubles; and although he made a noble struggle against them, and when deprived of office acquired fresh claims to the admiration and gratitude of his country, henceforth he had frequent cause to regret that he had not spent his life in comfortable obscurity at Worcester, or in philosophic calm at Oxford.

September, 1697.

Immediately after the peace of Ryswick, the English nation, being no longer in conflict with the French, became dis-

* What seems still more extraordinary,—Lord Hardwicke, so recently as the year 1762, threatened to put it in force against Sir Michael Foster, who, in his admirable work on Crown Law, introduced some cases decided by the House of Lords. — *Life of Sir M. Foster*, p. 45.

It may be compared to the standing order passed in 1721, levelled against Edmund Curl, declaring it to be "a breach of privilege to publish the Life of any deceased Peer or Lord of Parliament without the permission of his heir or executors." I deemed it necessary to move to have this standing order repealed before I ventured to publish my "Lives of the Chancellors," as I should have found some difficulty in discovering the heir of St. Swithin or Turkatel, and I did not like to run the risk of being sent to the Tower for defying the authority of the House. — See *Hansard's Debates*, 28th July, 1845.

contented at home, and ceased to consider William their deliverer and their champion. The Tory party grew stronger and more indifferent as to the means they employed to recover power. Louis XIV., although he had reluctantly acknowledged the Revolution settlement in England, was ready to seize any favourable opportunity for reviving the claim of James, and, looking to the Spanish succession, he kept up an immense military force, to be actively employed as soon as fate should put an end to the inglorious career of Charles II., the last prince of the Austrian line who reigned beyond the Pyrenees.

Growing power of the Tories. Views of Louis XIV. to the Spanish succession.

To preserve internal tranquillity, still threatened by the Jacobites, and as a preparation for foreign war which might at any moment be rekindled, William proposed to keep embodied a few thousands of the veteran troops which had fought with him so gloriously at Namur; but the Commons, under a pretended regard for public liberty, factiously came to a vote "that all the land forces of the kingdom that had been raised since the 29th of September, 1680, should be paid and disbanded."* The debates upon the subject in Parliament were most violent, and many publications issued from the press by Tory partisans, inveighing against standing armies, and accusing the King of a design to make himself absolute with the aid of his Dutch guards. In answer to these came out a pamphlet, entitled "A Letter balancing the Necessity of keeping a Land Force in time of Peace, with the Dangers which may follow therefrom." This was universally ascribed to the Lord Chancellor, and is certainly much after his manner. I believe it to be his; and, proving the author to be far in advance of his age for sound constitutional doctrine and for just views of society and of civil government, it reflects as much credit upon him as any of the popular treatises which he wrote in the reign of Charles II. He professes impartially to state the arguments on both sides, but strongly leans throughout in favour of a small standing army, to be voted annually and paid by Parliament. He shows the absolute necessity for such a force being kept

Somers's pamphlet in defence of standing army under control of Parliament.

* 5 Parl. Hist. 1191. 1194.

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up in the present state of the world, and argues that, being under the control of Parliament, it never can be dangerous to public liberty. He thus concludes:—"From a standing army, now become necessary to defend us from foreign attack, nothing is to be apprehended as long as England is true to herself; and whensoever the nation has lost the noble sense of liberty by which we are now distinguished, we shall soon make fetters for ourselves though we should find none ready made."* Considering that even Montesquieu and Blackstone† continued to declaim upon the incompatibility of standing armies and national freedom, we ought to honour the patriot who, in the 17th century, boldly pointed out that a body of professional soldiers was much better fitted for attaining the ends either of defence or of conquest, than those temporary forces which are raised by occasionally embodying and arming a portion of the citizens, and that though such an institution may be dangerous in a country where the powers of the Prince are ill defined, after our rights had been declared and guaranteed at the Revolution,—in England it could be attended with no risk, and should excite no alarm. But, although Somers's reasoning has finally prevailed, it produced little effect in his own time, and William was not only obliged to ship off his Dutch guards, but to reduce almost all the English regiments which had returned from Flanders.

William favours the Tories.

As the Tories intended, he took this most grievously to heart, and he became more and more sick of the Whig party, which had not sufficient influence to procure him the gratification of his favourite passion, or even to enable him to provide for the public safety. In those days there was no such thing as a sudden, entire, sweeping change of administration, but William from this time, as a matter of policy, began to favour the Tories. The Earl of Jersey was made Secretary of State in the room of Somers's friend, the Duke of Shrewsbury; the Earl of Pembroke succeeded the Duke of Leeds as president of the Council; and Lord Lonsdale the Earl of Pembroke, as Lord Privy Seal. Nay, Montague,

* See Tind. Cont. Rap. vol. xiv. 416. † Sp. L. ii. 6. 1 Bl. Com. 414.

with whom Somers had ever so cordially co-operated, and who was considered the second leader of the Whigs, retired from the office of Chancellor of the Exchequer, in which he had gained such reputation, to make room for Mr. Smith.

Somers was still more obnoxious to the Tories than any of his colleagues who were gone, and they would have been still more delighted to have seen him sacrificed; but the Chancellor did not offer voluntarily to resign, and William could not yet bring himself to dismiss him.

It might have been well for Somers's reputation if he had been deprived of the Great Seal before the misapplication of it, which I am now about to relate, and which, though it did not in the event subject him to punishment, certainly casts a shade upon his fame.

**Claimants of the Spanish succession.**

In the prospect of the death of Charles II. of Spain without issue, all Europe was in a state of anxiety respecting the succession to his vast dominions. "His eldest sister had married Lewis XIV.; and in the common course of inheritance the Dauphin would have been his heir. But the Infanta had, at the time of her espousals, solemnly renounced, in her own name, and in that of her posterity, all claim to the succession. This renunciation had been confirmed in due form by the Cortes. A younger sister of the King had been the first wife of Leopold, Emperor of Germany. She, too, had at her marriage renounced her claims to the Spanish crown; but the Cortes had not sanctioned the renunciation, and it was therefore considered as invalid by the Spanish jurists. The fruit of this marriage was a daughter, who had married the Elector of Bavaria. The Electoral Prince of Bavaria inherited her claim to the throne of Spain. The Emperor Leopold was son of a daughter of Philip III., and was therefore first cousin to Charles. No remuneration whatever had been exacted from his mother at the time of her marriage. Thus that claim which, according to the ordinary rules of inheritance was the strongest, had been barred by a contract executed in the most binding form. The claim of the electoral Prince of Bavaria was weaker. But so also was the contract which bound him not to prosecute his claim.

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The only party against whom no instrument of renunciation could be produced, was the party who, in respect of blood, had the weakest claim of all."* Louis and Leopold each claimed the whole, but to lessen alarm from excessive empire, proposed that the inheritance should go to a younger branch of the family; the one to the Duke of Anjou, and the other to the Archduke Charles.

William, whose destiny it was to preserve the balance of power in Europe, was placed in a situation of the greatest embarrassment. Although the Spanish King was yet quite a young man, and was married to a young and beautiful wife, from the exhausted state of his health all hope of posterity was gone, and every packet might bring the news of his dissolution.

William's indiscreet policy in entering into the Partition Treaties.

The diplomacy into which William now entered, and which produced the two Partition Treaties, has been much censured, and does seem to us very inexplicable. The necessity of the case might have justified him in disposing of the sovereignty of great states without the consent of their inhabitants; but the measures he took seem calculated to enhance the danger which he apprehended, and to further the ambitious schemes of his great opponent. Lord Somers, and his more prudent councillors, were of opinion that the settlement of the Spanish succession should not be attempted without the concurrence of the Spanish government; and that if such a settlement could not be obtained, the wise course would be to wait prepared till the crisis arrived, and then to be governed by circumstances, which the keenest politician could not foresee.

But William, acting without the advice of any English minister, followed a different course, and fell into the snare which was laid for him. Louis XIV., to secure at all events a certain portion of the Spanish dominions to his family, and to disgust Spain with England that he might improve his chance of obtaining all, proposed to William that they two, of their own authority, should settle the question of the succession — by giving Spain the Indies, and the Netherlands to the electoral Prince of Bavaria, the two Sicilies to the

* Macaulay's Essays, ii. 48.

Dauphin, and the Milanese to the Archduke Charles. Perhaps William thought that the King of Spain, whose great object it was to preserve the integrity of the empire which he ruled, whoever should be the heir, might be offended with France for this interference, and make another disposition of the whole in favour of a German Prince, or that this was the only mode to prevent the union of France and Spain under the same crown. Whatever might be his reasoning, he was strongly inclined in favour of the arrangement; and he was not swayed by the opinion of Lord Somers, who, being consulted, condemned it in as strong language as a minister could venture to employ.

In July, 1698, the King having dissolved the parliament went over to Holland, and the Partition scheme seemed to be abandoned; but the Chancellor, having retired to Tunbridge Wells to recruit his health from the severe labours he had undergone, was surprised to receive the following letter from his royal Master:—

August $\frac{15}{25}$. 1698.

William's letter to Somers respecting the first Partition treaty.

"I imparted to you, before I left England, that in France there was expressed, to my Lord Portland, some inclination to come to an agreement with us concerning the succession of the King of Spain; since which Count Tallard has mentioned it to me, and has made such propositions, the particulars of which my Lord Portland will write to Vernon, to whom I have given orders not to communicate them to any other besides yourself, and to leave to your judgment to whom else you would think proper to impart them, to the end that I might know your opinion upon so important an affair, and which requires the greatest secrecy. If it be fit this negotiation should be carried on, there is no time to be lost, and you will send me the full powers under the Great Seal, with the names in BLANK, to treat with Count *Tallard*. I believe this may be done so secretly that none but you and Vernon, and those to whom you shall have communicated it, may have knowledge of it, so that the clerks, who are to write the warrant and the full powers, may not know what it is. According to all intelligence the King of Spain

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cannot outlive the month of October, and the least accident may carry him off every day. I received yesterday your letter of the 9th. Since my Lord Wharton cannot at this time leave England, I must think of some other to send ambassador to Spain: if you can think of any one proper, let me know it, and be always assured of my friendship.

"WILLIAM R."

Conduct of Somers on receiving this letter.

Lord Somers so far acted properly that he immediately communicated this letter to four of his colleagues, and they all agreeing with him as to the inexpediency of the treaty, he sent their explicit opinion to the King, with the reasons on which it was founded; but it must be admitted that he acted most unconstitutionally in sending at the same time a blank commission under the Great Seal, by which any Commissioners whose names William might please to insert in it should be authorised to conclude the treaty on the terms proposed, or on any other terms which William might dictate. There can be no doubt that if his opinion upon a matter of such magnitude was disregarded, it was his duty to resign; and that at all events he ought not to have enabled the King to conclude an important treaty, by which England was to be bound, without the privity and advice of a responsible English minister. If the government was to be carried on by the Sovereign's personal exercise of the prerogative, what had been gained by the Revolution? Yet in the State Paper Office there is the following letter, with the genuine signature of Lord Somers: —

Tunbridge Wells, 28th August, 1698. O. S.

Letter of Somers to William.

"SIR, — Having your Majesty's permission to try if the waters would contribute to the re-establishment of my health, I was just got to this place when I had the honour of your commands: I thought the best way of executing them would be to communicate to my Lord of Orford, Mr. Montagu, and the Duke of Shrewsbury (who before I left London had agreed upon a meeting about that time), the subject of Lord Portland's letter; at the same time letting them know, how

strictly your Majesty required that it should remain an absolute secret.

"Since that time Mr. Montagu and Mr. Secretary are come down hither; and upon the whole discourse three things have principally occurred to be humbly suggested to your Majesty.

"First, that the *entertaining* a proposal of this nature seems to be attended with very many ill consequences if the French did not act a sincere part; but we were soon at ease as to any apprehension of this sort, being fully assured your Majesty would not act but with the utmost surety, in an affair wherein the glory and safety of Europe were so highly concerned.

"The second thing considered was the very ill prospect of what was like to happen upon the death of the King of Spain, in case nothing was done previously towards the pro ceeding against that accident which seemed probably to be very near: The King of France having so great a force in such a readiness, that he was in a condition to take possession of Spain, before any other Prince could be able to make a stand: Your Majesty is the best judge whether this be the case, who are so perfectly informed of the circumstances of parts abroad.

"But, so far as relates to England, it would be want of duty not to give your Majesty this clear account,—That there is a deadness and want of spirit in the nation universally, so as not at all to be disposed to the thought of entering into a new war, and that they seem to be tired out with taxes to a degree, beyond what was discerned till it appeared upon the occasion of the late elections: This is the truth of the fact, upon which your Majesty will determine what resolutions are proper to be taken.

"That which remained, was the consideration what would be the condition of Europe, if the proposal took place: Of this we thought ourselves little capable of judging: But it seemed that if Sicily was in the French hands, they will be entirely masters of the Levant trade; that if they were possessed of Final, and those other sea-ports on that side, whereby Milan would be entirely shut out from relief by sea,

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or any other commerce, that Duchy would be of little signification in the hands of any prince, and that if the King of France had possession of that part of Guipuscoa, which is mentioned in the proposal, besides the ports he would have in the ocean, it does seem, he would have as easy a way of invading Spain on that side as he now has on the side of Catalonia.

"But it is not to be hoped that France will quit its pretences to so great a succession without considerable advantages; and we are all assured your Majesty will reduce the terms as low as can be done, and make them, as far as possible in the present circumstances of things, such as may be some foundation for the future quiet of Christendom, which all your subjects cannot but be convinced is your true aim: If it could be brought to pass that England might be some way a gainer by this transaction, whether it was by the Elector of Bavaria (who is the gainer by your Majesty's interposition in this treaty), his coming to an agreement to let us into some trade to the Spanish plantations, or in any other manner, it would wonderfully endear your Majesty to your English subjects.

"It does not appear, in case this negotiation should proceed, what is to be done on your part in order to make it take place: Whether any more be required than that the English and Dutch should sit still and France itself to see it executed: If that be so, what security ought we to expect that if, by our being neuter, the French be successful, they will confine themselves to the terms of the treaty, and not attempt to make *farther* advantages of their success?

"I humbly beg your Majesty's pardon that these thoughts are so ill put together: These waters are known to discompose and disturb the head so as almost totally to disable one from writing: I should be extremely troubled if my absence from London has delayed the despatch of the Commission one day: You will be pleased to observe that two persons (as the Commission is drawn) must be named in it, but the powers may be executed by either of them: I suppose your Majesty will not think it proper to name Commissioners that are not English or naturalised in an affair of this nature.

"I pray God give your Majesty honour and success in all your undertakings. I am with the utmost duty and respect,

"Sir,

"Your Majesty's most dutiful
"and most obedient Subject and Servant,
"SOMERS, C.

"P. S. — The Commission is wrote by Mr. Secretary, and I have had it sealed in such a manner that no creature has the least knowledge of the thing besides the persons named."*

First Partition treaty concluded.

Under the authority of this Commission, a treaty was signed, and being sent to England, the Lord Chancellor, by a warrant under the hand of the King, ratified it under the Great Seal, without communicating it to the Privy Council, or any others of his colleagues. — Such is the history of the treaty which, with such exquisite ingenuity and humour, was ridiculed by Arbuthnot, some years afterwards in his "History of John Bull."† Perhaps we ought to give William credit for anticipating "the paroxysm of rage into which poor old Lord Strutt fell, on hearing that his runaway servant Nick Frog, his clothier John Bull, and his old enemy Lewis Baboon, had come with quadrants, poles, and inkhorns, to survey his estate, and to draw his will for him." On the arrival of the news of the Partition treaty at Madrid, Charles did make a will devising the whole of his dominions to the Bavarian Prince, but unhappily this will had scarcely been signed when the Prince died.

March, 1700.

William and his Chancellor still both remaining under what seems nothing short of infatuation, a second Partition Treaty was, with equal secrecy and irresponsibility, negotiated and ratified; — whereby it was agreed that Spain, the Indies, and the Netherlands should descend to the Archduke Charles, — that France should still have the two Sicilies, — and that for her accommodation the Duke of Loraine should surrender

* 2 Ralph, 796, 797.

† In reality, the King *proprio vigore* had agreed to all the terms of the treaty four days after writing for powers to a negotiator.

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his principality to her in exchange for the Milanese. Nothing whatever was stipulated for England, and all sensible standers-by saw that, when the crisis arrived, Louis would utterly disregard the treaty as well as the renunciation, and seek to annihilate the Pyrenees.

Unpopularity of the treaty.

Although the manner in which these treaties had been negotiated and concluded was not yet known in England, the terms of them excited there a tumult of disapprobation, and greatly strengthened the Tory party, who not unreasonably threw all the blame upon the Whigs. No direct vote of censure upon either treaty was proposed in parliament, but a series of motions were made on other subjects, which were meant to annoy the government and to irritate the King, with a view of compelling him entirely to banish the Whigs from his councils.

Lord Somers attacked in parliament for appointment and removal of magistrates.

Attacks were made on the Lord Chancellor for his appointment and dismissal of magistrates, and a glowing picture was now drawn of his arbitrary treatment of those who refused to sign the association in defence of the King's safety on the discovery of the "Assassination Plot."

Charge of piracy against him.

A more factious movement was a charge against the Lord Chancellor of being guilty of piracy on the high seas, and sharing in the booty of which, contrary to the law of nations, foreigners were robbed. So far back as the beginning of the year 1696, the Indian seas being much infested with pirates, it was very desirable to send an English ship of war to cruise against them, but there was no fund to bear the expense, for "Parliament had so appropriated the money given for the sea, that no part of it could be applied to this expedition."* The King recommended a private subscription, saying that he would lay down 3000*l.* himself. He afterwards excused himself of his quota, but the Lord Keeper actually contributed 500*l.*, and so did the other ministers in proportion. Accordingly a noble vessel, called "The Adventure Galley," was fitted out, and the command of her given to William Kid, a naval officer, hitherto esteemed for honour as well as gallantry. "The Lord Keeper knew

* 3 Burnet, 327.

nothing of the matter farther than that he thought it became the post he was in to concur in such a public service; but a grant was made to the undertakers of all that should be taken from the pirates by their ship." * Captain Kid was regularly commissioned "to sink, burn, and destroy pirates," but, on arriving in the Indian seas, he turned pirate himself, and cruised against the commerce of all nations indiscriminately, — till, after a sharp engagement with an English frigate, in which several fell on both sides, he was captured, and brought home in irons. A motion was now unblushingly made in the House of Commons to hold the Lord Chancellor liable for all these enormities, the mover not only inveighing against the illegality of the expedition and of the grant, but broadly insinuating that all the murders and robberies had happened in consequence of his Lordship's orders, for the purpose of swelling his share of the profits, and that he was looked to by Kid for protection and indemnity at home. "Such black constructions are men who are engaged in parties apt to make of the actions of those whom they intend to disgrace, even against their own consciences." † However, the charge was so outrageous, that none would vote for it who had any regard for character, and it was rejected by a large majority. ‡

Bill to resume the King's grants carried.

The next measure was better imagined, and was attended with brilliant success. A bill was introduced to resume the grants of Irish forfeited estates, which William had very lavishly distributed among his favourites. Being once thrown out by the Lords, it was tacked to a bill of supply, — depriving the Lords (as it was said) of any power to touch it without losing the supply. The Court still made strenuous exertions to stop this multifarious bill. Lord Somers, on the score of ill health, was absent from the debates upon it in the Peers, and a charge was brought against him, that, not venturing openly to oppose it, he feigned sickness, and tried to defeat it by intrigue. This was an unlucky time for the Chancellor, as the King, most anxious to defeat the bill, was highly dissatisfied with him for not opposing it more actively. It

* 3 Burnet, 327. † Ibid. 328.

‡ Captain Kid was afterwards tried and executed, 14 St. Tr. 123. 147.

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passed both Houses, and such was the strong feeling in favour of it with the public, that Lord Somers would not venture to advise on the present occasion an exercise of the veto by the Crown, and it received the royal assent.*

10th April, 1700. Motion in the House of Commons for the removal of Lord Somers lost.

The Commons not contented with this victory, a motion was made that an humble address be presented to his Majesty, praying, "that his Majesty will remove John Lord Somers, Lord Chancellor of England, from his presence and councils for ever." The debate upon this occasion is unfortunately lost; and we only know, generally, that his arbitrary removal of magistrates after the assassination plot, and the other charges which were afterwards made the subject of the impeachment, were now hotly urged against him; while he was ably defended by some of his friends, and his merits and services were so powerfully portrayed, that the motion was negatived by a majority of 167 to 106.† However, the Commons were determined to carry their object indirectly; and, before separating, they came to a vote which they knew would be most offensive to the King, and would drive him to throw himself into the arms of the party who were strong enough to protect him from such insults — "that an address be presented to his Majesty, praying, that no person who is not a native of his Majesty's dominions, except his Royal Highness Prince George of Denmark, be admitted to his Majesty's councils in England or Ireland."

11th April, 1700. Illness of Lord Somers.

To avoid receiving and answering this address, William came to the House of Lords next morning, and the Commons being summoned, — by his orders the Earl of Bridgewater, in the absence of the Lord Chancellor ‡, declared that the Parliament was prorogued, — and it was not allowed again to assemble.

Jan. 23d. 1700.

Lord Somers had been absent from the House above two months. It so happened that the last time he had presided on the woolsack, was the day on which his celebrated

* 11 & 12 W. 3. c. 2.

† Com. Journ. 5 Parl. Hist. 1221. Burnet, iii. 334.

‡ There was a commission from the Crown authorising John Earl of Bridgewater to act as Speaker of the House of Lords in the absence of the Lord Chancellor.

judgment in the "Bankers' Case" was reversed.* Party feeling had mixed itself up a good deal in this affair, and the story was circulated that he had taken to his bed not only from the slur cast upon his judicial fame, but from the prospect of his approaching fall.

Somers rejects overture from the Tories.

An attempt was now made to induce him to quit his party, and Sunderland pressed him to join with the Tories in a new ministry; but he answered, — "This is neither my custom nor consistent with my honour."† This offer being rejected, the Tories were relentless against him, and Harley, above all, was eager for his dismissal.‡

The King intimates his intention to remove Somers.

William regarded the Chancellor with unshaken confidence, but thought that he could not oppose his own wishes to the national indignation, however unreasonable it might be, and that before calling another parliament his administration must be remodelled. "The first time that the Lord Somers had recovered so much health as to come to Court, the King told him it seemed necessary for his service that he should part with the Seals, and he wished that he would make the delivering them up his own act. He excused himself in this; all his friends had pressed him not to offer them, since that seemed to show fear or guilt, so he begged the King's pardon if in this he followed their advice; but he told the King that whensoever he should send a warrant under his hand commanding him to deliver them up, he would immediately obey it." On the 17th of April the expected warrant was brought to him by the Earl of Jersey, and, still in the 48th year of his age, he delivered to that nobleman the Great Seal, which for above seven years he had held with so much honour, and which, amidst all the strange vicissitudes which he and his party afterwards experienced, he never recovered.§

Somers deprived of the Great Seal.

* Ante, p. 114. *et seq.*

† Cunningham, i. 183.

‡ "The just reputation and high rank which he had justly acquired were intolerable to Harley's envious heart."—Birch's MSS. 4223. Brit. Mus.

Oldmixon's account of of Lord Somers's dismissal.

§ The following account of this affair is given by Oldmixon, on the authority of a gentleman who, he says, had it from Lord Somers himself: — "The King some time before the prorogation, which was April 11., had given his Lordship a hint of the necessity he should be under to part with him, in order to accommodate matters with those in opposition to the measures of the administration. His Lordship upon this told his Majesty, that he knew very well what

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his enemies aimed at by their abusing and persecuting him as they had lately done. That the Seal was his greatest crime, and if he quitted it he should be forgiven; but, knowing what ill use would be made of it if it were put into their hands, he was resolved, with his Majesty's permission, to keep it in defiance of their malice, and to stand all the trials they should put upon him with the support of his innocence and the hopes of his being serviceable to his Majesty. That he feared them not; but if he would be as firm to his friends as they would be to him, they should be able to carry whatever points he had in view for the public welfare in a new parliament. The King shook his head, as a sign of his diffidence, and only said, *it must* be so."—*Oldm. Hist.* 208.

Tindal's.

Tindal says:—"Thus the Lord Somers was discharged from this great office which he had held seven years with a high reputation for capacity, integrity, and diligence. His being thus removed was much censured by all but those who procured it. Our princes used not to dismiss ministers who served them well, unless they were pressed to it by a House of Commons that refused to give money till they were laid aside. But here a minister, who was always vindicated by a large majority in the House of Commons when he was charged there, and who had served both with fidelity and success, and was, indeed, censured with nothing so much as for his being complete with the King's humour and motions, or, at least, for being too soft or too feeble in representing his errors to him, was removed without the shadow of complaint against him. This was done with so much haste, that those who had prevailed with the King to do it, had not yet concerted who should succeed him. They thought that all the great men of the law were aspiring to that high post, so that any one to whom it should be offered would certainly accept it. But they soon found they were mistaken; for what by reason of the instability of the Court, what by reason of the just apprehensions men might have of succeeding so great a man, both the Lord Chief Justice Holt and the Attorney General Trevor, to whom the Seals were offered excused themselves. It was Term time, so that a vacancy in that post put things in some confusion. A temporary commission was granted to the three Chief Judges to sit in the Court of Chancery; and on the 21st of May the Seals were at last given, with the title of Lord Keeper, to Sir Nathan Wright, one of the King's Serjeants at law, in whom there was nothing equal to the post, much less to him who had lately filled it. The King's inclination seemed now turned to the Tories and to a new parliament.— *Tind. Cont. Rap.* xiv. 515.

Evelyn's.

The following extract from Evelyn's Diary shows the feelings of the day, and proves that the worthy author had taken his impressions a good deal from the Tory company which he had been keeping:—"24th April, 1700. The Seale was taken from Lord Chancellor Somers, tho' he had been acquitted by a greate majority of votes for what was charged against him in the House of Commons. This being in Term time put some stop to business, many eminent lawyers refusing to accept the office, considering the uncertainty of things in this fluctuating conjuncture. It is certain that this Chancellor was a most excellent lawyer, very learned in all polite literature, a superior pen, master of a handsome style, and of easy conversation; but he is said to make too much haste to be rich, as his predecessor and most in place in this age did, to a more prodigious excesse than was ever known. But the Commons had now so mortified the Court party, and property and liberty were so much invaded in all the neighbouring kingdoms, that their jealousy made them cautious, and every day strengthened the law which protected the people from tyranny."

# CHAPTER CIX.

CONTINUATION OF THE LIFE OF LORD SOMERS TILL THE DEATH OF KING WILLIAM.

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Complaints on the dismissal of Somers.

THE Whigs were highly incensed by the removal of Lord Somers, and loudly complained of the conduct of William. They held the same language during the remainder of his reign, and even invented an anecdote that in his last moments he had expressed deep remorse for his ingratitude to the individual to whom he owed the Crown of England.* Lord Somers was too sensible a man to do more than breathe a passing murmur that another effort had not been made to save him. He knew well that after the "Abdication" of James, an English King could only govern through his parliament.†

Difficulty in the appointment of his successor.

The Chancellor's dismission had produced a deep sensation in Westminster Hall. "The Courts" says Cunningham, "were immediately deserted, the laws silent, and all proceedings at a stand, for no one thought himself worthy to succeed Somers in his high office."‡ William had made no provision for the appointment of a successor, and from the present unsettled state of parties the Great Seal not only went a-begging, but met with many rebuffs. The first application was made to Sir Thomas Trevor, the Attorney General, but he wisely would not lose his practice at the bar for the prospect of being in a few weeks an Ex-Chancellor. Chief Justice Holt next had the bauble held out to him, but he said that both prudence and honesty prompted him to reject it, for he held his present office *quamdiu se bene gesserit*, and he felt himself competent to the discharge of its

* Cunningham, vol. i. 252.; Burnet, iii. 335.

† "The removing of the Lord Somers from his high station, though it displeased many people, yet it seemed not to affect his Lordship, who retired with content and temper, and upon all occasions in parliament served the King and the interests of the public with the same zeal as if he had not lost a place."—Kennet, iii. 783.

‡ Hist. i. 183.

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duties, whereas he had never practised in a Court of Equity in his life.* Even puisne Judges and counsel without office at the bar refused the offer made them, though not yet warned by the lines which have not been able to save others from such folly:—

> "Ambition this shall tempt to rise,
> Then whirl the wretch from high,
> To bitter scorn a sacrifice
> And grinning infamy."

Great Seal given to the Chiefs of the three common law Courts.

As it was now the middle of Easter Term, and important law business was suspended, the office of Chancellor being in abeyance,—the Great Seal, after remaining ten days in the King's own hands, was delivered into the temporary custody of the two Chief Justices and the Chief Baron as Lords Commissioners.† We learn from the letters of Secretary Vernon, lately published‡, that an intrigue was then entered into by Lord Sunderland with the Duke of Shrewsbury and others, professedly with a view of restoring the Ex-chancellor to his office; but Somers himself was not privy to it, and I suspect that the whole was merely an attempt to mystify the Whigs by holding out a prospect of returning favour to their chief. On the 21st of May, one NATHAN WRIGHT, Serjeant at Law, was prevailed upon to accept the Great Seal as Lord Keeper.§

Plan for recalling Somers.

* 2d May. "Lord Justice Holt," says Prior, "having been at Hampton Court, and with the King in private, occasioned a report that he had refused the Seals. If it be so or not, I cannot say; but as yet the Seals are not disposed of."—Letters to Earl of Manchester; Cole's Memoirs, p. 128.

Some say that he exclaimed, "I never had but one cause in Chancery, and as I lost that, I cannot think myself qualified for so great a trust."—Grainger, i. 164.

† Cr. Off. Min. fol. 141. ‡ A. D. 1841.

Letters of Vernon relating to Somers.

§ I give a few extracts from Vernon's Letters, written about this time, to the Duke of Shrewsbury, relating to Lord Somers, which are very curious:—"*Sunday, noon.* The two Chief Justices and the Chief Baron are to be here this afternoon, to have the custody of the Great Seal committed to them. It will not rest long in their hands, the King being sensible of the necessity of appointing a Keeper. It seems to me as if Sir John Powell were not like to be the man."[1]—"*Wednesday,* 10 *o'clock.* Lord Sunderland has a great desire to speak with your Grace in relation to my Lord Chancellor; but having no opportunity, he has told me what he

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[1] He was a very upright man; and having acted honestly as a Judge on the trial of the Seven Bishops, was one of the very few not swept away at the Revolution.

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Lord Somers, on his dismissal from office, having spent some time at Tunbridge Wells for the recovery of his health, re-

Conduct of Lord Somers on his retirement.

would have proposed to you about a method to be used for restoring the Seals to my Lord Chancellor. I know not how practicable it is, but I told him I would communicate it to you if I had the honour of seeing you to-morrow at Hampton Court." — "*May* 9. *and* 10. 1700. The proposal at Woborne is this, — That the Seals should be put into the hands of Commissioners, such as my Lord Somers, if he thinks fit, shall name for it, who are to resign whenever his Lordship shall think proper to take the Seals. It will be left to him to consider whether he will take them before the next session of parliament be over, that the same ill ferment may not show itself again on his account, especially while the matter of Kid is depending. If this be approved of, it is intended to keep it secret with all the care imaginable, that neither the King's business may be obstructed, nor my Lord Somers be made uneasy, with the old unreasonable jealousies on his account; and in the mean time that all things continue as they are, without displacing any body yet. If it be approved of, means may be used to soften some tempers, and dispose them to be more moderate next winter, or to let them alone if it be disliked. This, my Lord Sunderland says, he has as yet mentioned to nobody, nor will he till he knows your thoughts upon it. If you gave into it, he believed you would discourse of it with my Lord Wharton or Mr. Montague, and by them prevail with my Lord Somers. He is confident he can bring the King to it, and will lay out his utmost strength in it. He says it cannot be avoided, but my Lord Albemarle and Lord Jersey must know it, and that is all that will be privy to it at Court. — I made two objections to it; the first was, that I chiefly apprehended that my Lord Somers would not be prevailed with to return any more to his employment. The manner of the King's parting with him, the violence of his enemies, and the unsupportable fatigue of the place, would deter him from changing a quiet, honourable retreat for a turbulent and unsafe condition. The next was, I doubted whether this would be kept as secret as it ought to be; and if that failed, it would have very ill consequences: my Lord Somers would be more pushed at, and the King's affairs more embroiled than ever. I add a third thing, that if this should appear at first to be a scheme of his Lordship's, it would be received with great prejudice: it might be thought a trick, only to amuse the Whigs and keep them quiet the next session; besides, as some believe he was the author of my Lord Somers's removal, they would never expect he should deal sincerely with him, nor be willing he should have any merit in obliging him. To this he answered he could not help the hard censures he was under, but was sure he did not deserve them. He has never mentioned my Lord Somers but with esteem, and nobody can be more convinced of what use it is to the King and the public that he should be at the head of the affairs, and that the administration should be in the hands of the Whigs. He conceives the great difficulty will lie in the gaining of my Lord Somers's consent; but if your Grace thought well of the proposal, he believes it would succeed in every part, and he would not stir out of town till he saw it accomplished; whereas otherwise he has designed going to Althorp on Wednesday next. I shall take no notice of this to Mr. Montague, or any body else. I find myself under my Lord Sunderland's circumstances, and apprehend myself so suspected, without knowing any cause I have given for it, that silence will best become me on all accounts. If your Grace finds this matter practicable, you will mention it to whom and in what manner you think fit. If you disapprove of it, I suppose there is an end of it; and I wish any body else may find out a scheme that will more tend to our settlement." — On May 10. Vernon writes to Shrewsbury that "Sunderland wishes more reserve should be used in the affair, and that it should not be further mentioned till the King should be sounded about it." He adds — "I hear the Attorney declines taking the Seals, notwithstanding all the persuasions that have been used."—May 11. Vernon at great length states assurances from Sunderland of his great regard for Somers—"that he was against removing

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treated to his villa, and there returning to his literary pursuits, which had been long interrupted, forgot his recent mortifica-

him; that he was much surprised when he heard that Lord Somers and the King had parted; that he wished they should be brought together again. By this means my Lord Somers would return into the King's service with a better grace and more authority than he had before. He knows no engagements the King is under to any person whatsoever in opposition to my Lord Somers. He consents that Lord Somers, Lord Orford, Lord Wharton, and Mr. Montague should be acquainted with the proposal, but no other person. If the difficulty should lie on my Lord Somers's part, and he be resolved against taking the Seals again, as preferring his own quiet, and not to expose himself to new attempts, the same measures may still be carried on with his concurrence, though not so satisfactorily to the public. In that case it must be considered who shall be recommended to the King as Lord Keeper; as also care to be taken that my Lord Somers be made easy in his fortune, which he hopes will likewise be done to all that be principally concerned in this matter to their entire satisfaction."

"*May* 14. Whatever difficulties be in the way, Lord Sunderland thinks they may be got over, and it is worth struggling with them to gain so good an end. As to the King's part, he knows it has been so long his opinion, that the Whigs were the only persons to be depended upon for the support of his government, that he makes no doubt but the King may be prevailed on to do any reasonable thing that will content them, which you may be satisfied in as soon as you can come to speak with the King. That he has made such a false step, in parting with my Lord Chancellor, is to be attributed to the great disturbance he was put into by that fatal bill. His Lordship is sure that, if the part he took in that bill had not made the King withdraw himself from him, the King would have had no hand in removing the Seals; but, as it is, he thinks the matter still retrievable, and that my Lord Somers may enter again upon business more to his satisfaction, and with a greater confidence between him and the King than has been hitherto: there will only want his concurrence, which will be his friends' part to persuade him to. Perhaps an offer of the Seals will be made to Serjeant Wright, to prevent their taking any jealousy, who are averse to the putting of the Seals into commission, which will be the last trial for a single person; but whether this take place, or that the Seals go into the hands of Commissioners, it will be equally consistent with the carrying on the other design, if it be approved of."—"*May* 16. I saw my Lord Sunderland yesterday. He tells me all dissatisfactions are over between the King and him. He found the King was set rather upon appointing a Keeper than Commissioners for the Seal, and Mr. Serjeant Wright is the man pitched on, if he will undertake it. I have heard since, that my Lord Rochester has undertaken to get him spoke to. What answer he will make, I know not; but he has been very ill of late, and is scarce recovered yet. If he boggles at it, I take it for granted Commissioners must be appointed, such as shall be proposed by those who have the Seals now in custody."—"*May* 18. I hear Mr. Montague has been lately with the King, and that they talked of affairs pretty freely. The King began with the reports that have been spread abroad of his hard usage to my Lord Somers, and mentioned how oft my Lord Somers had told him that he found he was growing a weight upon public business, which appearing every day more and more visible, the King was not unwilling to accept of his resignation. Mr. Montague hoped nothing would be expected from him that was not consistent with his friendship and obligations to my Lord Somers. The King answered, that was far from his thoughts; on the contrary, he expected that my Lord Somers should join with him in promoting what might be for his service and the public good, so as there might be no occasion for their taking any thing amiss of one another. I hear Mr. Serjeant Wright has closed with the offer that has been made him of the Great Seal, which I suppose will be delivered to him next council day." "*May* 21. I perceive your Grace thinks my Lord Sunderland's plan pretty impracticable. He has another opinion of it, and still believes you and he together

tions, and felt as if he should be contented never again to mix in political broils. He heard with indifference of the negotiations respecting the appointment of his successor, — although he must have experienced a little glow of satisfaction from the embarrassment produced by the repeated refusals of the Great Seal, —excusable vanity suggesting to him that one reason was the dread of being compared to him who had lately held it with such general applause. He was kept in entire ignorance of the Sunderland intrigue for neutralising the Whigs by the plan for his recall after the conclusion of the next session of parliament, or, as seems to have been pretty well foreseen, he would have indignantly spurned at it.

The King goes abroad.

There was now a lull before the tempest burst forth with fresh violence. The King having named Lords Justices, went abroad in the beginning of July, and did not return till the end of October. As yet, there was perfect tranquillity in Europe, and at home it seemed doubtful which of the two great parties was to prevail, or whether there might not be a cordial coalition between them. But events were in progress which speedily brought about a party conflict of unexampled violence, and which lighted up the flames of war from the Vistula to the Tagus.

could put it beyond doubt. The Council is summoned this afternoon for delivering the Great Seal to Mr. Serjeant Wright, and, accordingly, I am going to Hampton Court, where perhaps I may have something to write you from the King. I am just come from Hampton Court, where I have seen the Seals delivered to Mr. Serjeant Wright;—he has had a great fit of sickness. There was but an indifferent appearance of Councillors; perhaps my Lord Tankerville and Mr. Montague absented themselves designedly."—"*May* 23. Lord Sunderland is confident he should entirely satisfy you as to what he designs. He is positive that Mr. Serjeant Wright's having the Seals will be no obstruction at all to it, and the rather, since, when the Serjeant took the Seals, he did it with a foresight that he should not hold them long, and, therefore, intended to move his Majesty that his compliance might not turn to his prejudice by any change; but his Majesty prevented him, and of his own accord told him, that if any thing should arise which might require the Seals being removed out of his hands, he should not suffer by his accepting them. My Lord Keeper is not yet removed from his lodgings at the Gravel Pits, where he has been some time for the recovery of his health, but to-morrow, I hear, he comes to town."—"*May* 25. They suspect that Mr. Montague carries messages between the King and my Lord Somers, and some of them think that my Lord Sunderland is going into the country, because he cannot influence the King to enter further into the Tory measures."—"*May* 28. As to what your Grace asks, how my Lord Keeper is like to be satisfied if he should be removed again, I think that as difficult to answer as it is to know whether my Lord Somers would be willing to be reinstated if the way to it were never so open."—*Vern. Corr.* iii. 37—65.

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Will of Charles II. of Spain in favour of a French Prince.

Immediately after the second Partition Treaty, into which England had been duped, French intrigue was set to work to convert it into an engine for effecting the object of Louis XIV. to get possession of the whole of the Spanish monarchy; and through the dexterous management of the Cardinal Parto Carrero, the last male of the Spanish branch of the house of Austria was induced to execute a will, devising all his dominions to Philip, Duke of Anjou, the younger brother of the Dauphin. Immediately after this solemnity he expired. With scarcely the show of hesitation, Louis broke through all the obligations of the Partition Treaty, and accepted the splendid inheritance for his grandson. Philip was immediately recognised at Versailles as the successor of Charles II.; the whole court of France accompanied him to Sceaux, on his way to Madrid, and the whole French nation were intoxicated with joy at what they considered an immense accession to their empire.

Perfidious conduct of France.

Indignation in England directed against the Whigs.

In England the news excited corresponding consternation and resentment, and there was a violent cry against Lord Somers and the Whigs, to whom the Partition Treaties, and the misfortunes which followed upon them, were not unfairly imputed. A dissolution of parliament took place, and the elections ran strongly in favour of the Tories.

Feb. 6. 1701. Proceedings in the House of Commons against Lord Somers.

The new parliament met in the beginning of the following year, and the Ex-chancellor had great reason to dread its vengeance. After some time necessarily spent in providing for the Protestant succession, by calling in the house of Hanover*, in consequence of the death of the Duke of Gloucester, the promising son of the Princess Anne, the Partition Treaties were hotly debated in both Houses, and a proposal was made in the Commons "to impeach Lord Somers, late Chancellor of England, for the share he had had in these treaties, and for other high crimes and misdemeanours."† He thereupon caused it to be intimated to

April 14. 1701.

* See 12 & 13 W. 3. c. 2.

† This proceeding had excited great expectation. Thus wrote Prior, still a Whig, to the Duke of Manchester: "I must congratulate your happiness that you are out of this noise and tumult, where we are tearing and destroying every man his neighbour. To-morrow is the great day when we expect my Lord Chancellor will be fallen upon, though God knows what crime he is guilty of but that of being a very great man, and a wise and upright Judge." — *Pri. Corr.*

them, "that having heard that complaint had been made of him in their House, out of his high respect for the Commons of England, he begged that he might have permission to be heard before them in his own defence."

His speech in the House of Commons.

This was granted, although the House, taking umbrage because the proceeding which they intended to keep secret had been divulged, resolved to ask him whence he had the information which induced him to make the application?—"A chair was set by the Serjeant, a little within the bar on the left hand; then the Serjeant had directions to acquaint the Lord Somers that he might come in, and Mr. Speaker acquainted his Lordship that he might repose himself in the chair provided for him; and his Lordship was heard what he had to offer to the House." *

Of this memorable speech we have a very imperfect report,—from which we can barely trace the line of defence which he assumed. Having given an account of what we know to have passed about the negotiation with Tallard, he makes the King add, "that if he and his other ministers thought that a treaty ought not to be made upon such a project, then the whole matter must be let fall, for he could not bring the French to better terms." Lord Somers said, "he thought it would have been taking too much upon himself if he should have put a stop to a treaty of such consequence: The King's letter requiring the blank Commissions, he construed to be a *warrant* which he was bound to obey: But at the same time, he wrote his own opinion very fully to his Majesty, objecting to many particulars, and proposing several things which he thought were for the good and interest of England: That the treaty being concluded, he put the Great Seal to it, by the King'scommand,—as he thought he was bound to do: That as a Privy Councillor he had offered the King his best advice; and that as Chancellor he had executed the office according to his duty." Having finished, the Speaker asked him, "Who had informed him that there was a debate in the House about him?" He answered, "That he was strangely surprised at a question which he never knew was

* 5 Parl. Hist. 1245.

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put to any man that came to desire the favour of being heard, and that he not only would be content to be under the censure of the House, but would suffer the worst extremity that might befall him rather than bring prejudice to those who had placed confidence in him." He then withdrew, but came back immediately and desired to leave with the House the King's letter to him, preparatory to the first Partition Treaty, with a copy of his answer, which he said he had permission to lay before them.* It is said that his defence was so full and clear, that if, upon his withdrawing, the question had been quickly put, the whole matter had been soon at an end, and the prosecution let fall. But his enemies, assisted by an indiscreet friend, drew out the debate to such a length, that the impression which his speech had made was greatly effaced, and the House sitting till it was past midnight, the resolution was carried by a majority of ten — 198 to 188 — "That John Lord Somers, by advising his Majesty in the years 1698 to the treaty for partition of the Spanish monarchy, whereby large territories of the King of Spain's dominions were to be delivered up to France, was guilty of a high crime and misdemeanour."† And the House ordered Simon Harcourt, the great Tory lawyer, who was

Effect of it lost by the indiscretion of his friends.

Motion carried for his impeachment.

* This scene calls forth the following observation from Horace Walpole: — "The excellent balance of our constitution never appeared in a clearer light than with relation to this Lord, who, though impeached by a misguided House of Commons with all the intemperate folly which at times disgraced the free states of Greece, yet had full liberty to vindicate his innocence and manifest an integrity which could never have shone so bright unless it had been juridically aspersed." — *Royal and Noble Authors.* Yet the Ultra-Tory, Lord Dartmouth, was so far misled by his prejudices as to write, "I never saw that House in so great a flame as they were upon his withdrawing. He left them in a much worse disposition to himself than he found them; and I heard many of his best friends say they heartily wished he had never come thither."

Lord Melville's defence of himself before the House of Commons in 1806 is the last instance of a Peer claiming this privilege.

Early discretion of Sir Robert Walpole.

† Sir Robert Walpole, then a very young member, took a warm interest for Lord Somers, and voted for him, but, with the tact which he ever displayed, remained silent, that the effect of the Speech might not be weakened by an angry discussion — privately remarking "that the zeal of the warmest friends is oftentimes more hurtful to the person whose cause they espouse than the bitterest accusations of the most inveterate opponents." He was of opinion that if the question had been immediately put, the prosecution would have been withdrawn. Harcourt, to further the impeachment, laid the trap into which Cowper, who was against it, fell.—Cox's Memoirs of Sir Robert Walpole, i. 22. Walpole was afterwards Teller on the division respecting the Replication to Lord Somers's Answer to the Articles of Impeachment, when he was in a minority of 90 to 140. — Ib. 23.

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afterwards Lord Chancellor, to go up to the House of Lords to impeach him in due form.*

Having resolved likewise to impeach the Earl of Portland, the Earl of Orford, and Lord Halifax, — so eager were the Commons in the prosecution, that they immediately after presented an address to the King praying him to remove all the four from his presence and councils for ever. The Lords, alarmed at this attempt of the Commons to sentence as well as to accuse, voted a counter address, praying his Majesty "not to pass any censure upon the accused Lords until they are tried upon their impeachments, and judgment be given according to the usage of parliament and the laws of the land." The King's answer to the Commons was in general terms, and amounted to a polite reprimand for their irregularity.†

April 1. 1701.

Harcourt appearing at the bar of the Lords "in the name of the House of Commons, and all the Commons of England, impeached John Lord Somers of high crimes and misdemeanours," adding that "the House of Commons would, in due time, exhibit particular articles against the said Lord, and make good the same." ‡

Articles of impeachment.

Articles, to the number of fourteen, were forthwith regularly exhibited. Had the case come to a hearing, some of them would have been very serious. The first was for *advising* the Partition Treaty, and could not have been supported by evidence. But the second charged, "that for more effectually carrying on that treaty, the said Lord Somers did prepare a commission to which he affixed the Great Seal of England, without any lawful warrant, and without communicating the same to the rest of the Lords Justices, or advising in concurrence with his Majesty's Privy Council thereupon — that no certain persons of known honour, fidelity, and experience, were therein nominated Commissioners, but that a blank, or empty space, was left in the said commission at the time of the sealing thereof, whereon the Commissioners' names were afterwards to be inserted beyond the seas, although an unlimited power was given to such Commissioners to treat

* Burnet, iii. 369. 5 Parl. Hist. 1245
† 5 Parl. Hist. 1249, 1250. ‡ 14 St. Tr. 233.

with the Commissioners of the French King, and of the States General, touching the succession to the crown of Spain, and his Majesty did thereby engage himself to ratify and confirm whatever should thereupon be concluded by them or either of them." The third was for procuring, *ex post facto*, a warrant to authorise the commission. The fourth was for clandestinely affixing the Great Seal to the ratification of the treaty. The fifth was for doing the like to the second Partition Treaty in 1699. The sixth was for omitting to cause the commissions and ratifications, according to the duty of his office, to be inrolled — the omission being averred to have been for the sake of concealment. The next five articles accused him of passing in his own favour illegal grants of the property of the Crown. The thirteenth was for granting a commission under the Great Seal to Kid the pirate, who, under pretence thereof, had long preyed upon the ships and property of his Majesty's subjects in the West Indies; — and the last article most frivolously charged judicial delinquency—particularly in respect of the celebrated judgment in the "BANKERS' CASE." In his Answers, Lord Somers traversed the first article; as to the second, third, fourth, and fifth, he relied on his Majesty's express command. With respect to the sixth, he denied that the inrolment was a part of his duty. The charges respecting the grants he repelled, by asserting that they proceeded from the spontaneous bounty of the Crown, and that they all passed in due form.* On the thirteenth, he admitted that he had granted a commission to Captain Kid, and had assisted in fitting him out, but denied all privacy with his piracies. In replying to the last article, he excusably dwells upon his great exertions in the Court of Chancery to the manifest impairing of his health, and upon the anxiety he had ever manifested to do justice between the Crown and the subject, and between man and man.†

"Answers" of Lord Somers.

* Horace Walpole, though friendly to Somers, blames these grants (*Royal and Noble Authors*); but, says Lord Hardwicke, "One might as well lay a heavy charge on his father's (Sir R. Walpole) memory for the grants of lucrative offices obtained for his family and taking a pension when he resigned. Lord Somers raised no more from his offices and grants than a fortune which enabled him to live with decency and elegance."

† 14 St. Tr. 263—274.

Charges respecting the Partition Treaty considered.

There evidently was not the slightest colour for the impeachment, except with respect to the treaties; and to these very serious charges I must own I think the defence is very inadequate. It does seem astonishing to us that, to humour the King, Somers should have so acted; and still more astonishing, that he should openly rely on the King's command as a justification. This is the language of Attorney General Herbert, in defending himself for impeaching Lord Kimbolton and the five Members for high treason in the time of Charles I., but could little have been expected from the great contriver of the Revolution and the author of the Bill of Rights. The principle would introduce absolutism into the management of all domestic as well as foreign affairs, and is entirely at variance with every notion of responsible government.

Quarrel between the two Houses.

Luckily for the Ex-chancellor, the misunderstanding between the two Houses, which originated in the indiscreet attempt of the Commons to prejudge the case while it was pending, gradually increased, and finally rendered the impeachment abortive. The truth is, that at this time (incredible as it may seem to us), the Whigs had a decided majority in the House of Lords, although they were always outvoted in the House of Commons. From the creation of some new Peers,—from judicious appointments to the Right Reverend Bench,—and from the highest ranks in England being then much better educated than the fox-hunting squires who represented the counties and many of the smaller boroughs, the Upper House in the reign of William was, and for a good many years continued far in advance of the Lower in liberality and intelligence. The Lords had steadily supported the late Ministers now under impeachment, and an acquittal was pretty confidently anticipated, without any nice discrimination of the articles of charge. The Tory majority in the Commons, therefore, very injudiciously sought to stop the prosecutions by a quarrel, that the accused might not have the triumph of an acquittal on the merits. Had they abandoned the unfounded and frivolous articles, and proceeded regularly to trial on the charge respecting the Par-

Whiggism dominant in the Lords, and Toryism in the Commons.

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tition Treaties, they must either have obtained a conviction or covered their opponents with disgrace.

Day appointed for the trial of Lord Somers.

Lord Somers's "Answer" being communicated to the Commons, they neglected duly to put in a "Replication" to it, and they had for an unreasonable time omitted to exhibit written articles against other Lords whom they had impeached.

June 4. 1701. Angry messages interchanged between the two Houses.

Being urged to use despatch, they returned a saucy message, intimating that they were the best judges of the propriety of their own proceedings. On the petition of Lord Somers, "that a day might be appointed for his speedy trial," the Lords resolved to commence it on Friday the 13th of June. The Commons thereupon demanded a "Conference," in which, after many complaints, they proposed to their Lordships "that a committee of both Houses be nominated to consider of the most proper ways and methods of proceeding on impeachments according to the usage of parliaments in such cases." This proposal was scorned by the Lords, who sent a message intimating "that they thought themselves obliged to assert their undoubted right to appoint a day for trial of any impeachment depending before them without any previous signification from the Commons of their being ready to proceed; that their Lordships, according to the example of their ancestors, would always use that right with a regard to the equal and impartial administration of justice, and with a due care to prevent unreasonable delays; and that the expressions of the Commons were such as never before had been used by one House of Parliament to another, and such as, if returned, would necessarily destroy all good correspondence between the two."

Unreasonable demands of the Commons.

The Commons, however, refused to proceed till the preliminaries of the trial should be adjusted by a joint committee of Lords and Commons, and they should be assured particularly that the Lord to be tried should, during his trial, stand outside the bar, and that the other impeached Lords should not sit or vote; — declaring, "that to depart from these demands would be giving up the rights of the Commons of England known by unquestionable precedents, and making impeachments (the greatest bulwark for the laws and liberties of England) impracticable for the future."

A free conference.

At last the Lords and Commons met in a "Free Conference," in which there was such violence that there seems to have been some danger of their coming to the *via facti*, and rendering it necessary that constables should be called in to preserve the peace. Lord Haversham, in his speech, plainly accused the Commons of "fastidiously instituting these impeachments against Peers *whom they knew to be innocent.*" The Commons immediately broke up the conference, and rushed away. As they were withdrawing, the Duke of Devonshire, the Lord Steward, bawled after them, "he hoped they would return back like men of sense to finish the business on which they had been sent, and would not think that that Lord had any authority to use any such language to their Honourable House." On their arrival in their own chamber, they gave an inflammatory account of what had occurred; whereupon it was resolved, *nemine dissentiente*, "that John Lord Haversham hath at the Free Conference this day uttered most scandalous reproaches and false expressions, highly reflecting upon the honour and justice of the House of Commons, and tending to the making a breach in the good correspondence between the Lords and Commons, and to the interrupting the public justice of the nation by delaying the proceedings on impeachments." 2. "That John Lord Haversham be charged before the Lords for the words spoken by him this day at the Free Conference, and that the Lords be desired to proceed against the said Lord Haversham, and to inflict such punishment upon him as so high an offence against the House of Commons does deserve." The Lords in answer requested that the Commons would forthwith return to the Painted Chamber and resume the Free Conference, "which, they doubted not, would prove the best expedient to prevent the inconvenience of a misunderstanding upon what has passed,"—and the following day they earnestly repeated their request. They likewise required Lord Haversham to answer the charge against him. But the Commons peremptorily refused to proceed till they should have satisfaction for the insult offered to them at the Free Conference, till the joint committee should be appointed, and till they had assurance that each

Lord Haversham insults the Commons.

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The Commons refuse to attend the trial of Lord Somers.

Lord on his trial should stand at the bar, and that the the impeached. Lords shonld not sit or vote on the trial of each other. The Lords thereupon peremptorily fixed Tuesday the 17th of June for the trial of Lord Somers, and the Commons resolved "that they would not attend."

June 17. 1701. Proceedings at the trial.

The day of trial exhibited a series of party struggles rather than a grave judicial proceeding. The Tories in the House of Lords, although a minority, were numerous and determined, and they zealously backed up all the pretensions of the Commons. On the assembling of the peers, in the morning, the first question put was, "Whether the House should go this day into the Court in Westminster Hall, in order to proceed upon the trial of the Lord Somers?" After a sharp debate, it was carried in the affirmative; but twenty-six temporal and three spiritual Lords signed a protest in such violent language that it was expunged from the Journals. The impeached Lords having moved that "they have leave to be absent from Lord Somers's trial," this was strenuously opposed by the Tories, on the ground of its indicating that, contrary to the requisition of the other House, they had a right to be present if they chose; but it was carried in the affirmative.

The procession was then formed to Westminster Hall, which had been properly fitted up for the occasion. The Lords being duly seated according to their degrees, Lord Somers was placed *within* the bar, as this was only a case of misdemeanour, and the articles against him, and his answers, were read by the Clerk. The Commons were then solemnly called to appear, and make good their impeachment. No one appearing for the prosecution, the Lords returned in procession to their own chamber. But here a tumultuous discussion arose respecting the form of the question now to be put, and this being referred to the Judges, they declared that it ought to be, "Is John Lord Somers guilty, or not guilty, of the high crimes and misdemeanours whereof he is impeached?" But the Tory party said, "as they could not vote Lord Somers *guilty* upon any notoriety, without legal evidence, so they could not vote him *not guilty;* for although the Commons were deprived of the opportunity of making

good their accusation, he might, nevertheless, have committed all the offences charged against him, and with every possible aggravation." To give them some content, the question agreed to be put was, "That John Lord Somers be acquitted of the articles of impeachment against him exhibited by the House of Commons, and all things therein contained, and that the said impeachment be dismissed." This being settled, the Lords returned to Westminster Hall, and the question being put to all the Lords present, beginning with the junior Baron, fifty-six voted in the affirmative, and thirty-one in the negative. They then returned to their own chamber, and, without another division, judgment was solemnly pronounced by the Lord Keeper, by order of the House, "that the defendant be acquitted and the impeachment dismissed."

**Lord Somers acquitted.**

**His conduct during the impeachment.**

Lord Somers's personal demeanour during the whole proceeding was universally admired, and was afterwards celebrated by Addison: "This noble Lord, for the great extent of his knowledge and capacity, has been often compared with the Lord Verulam, who had also been Chancellor of England. But the conduct of these extraordinary persons under the same circumstances was vastly different. They were both impeached by a House of Commons. One of them, as he had given just occasion for it, sunk under it, and was reduced to such an abject submission as very much diminished the lustre of so exalted a character. But my Lord Somers was too well fortified in his integrity to fear the impotence of an attempt upon his reputation, and though his accusers would gladly have dropped their impeachment, he was instant with them for the prosecution of it, and would not let that matter rest until it was brought to an issue. For the same virtue and greatness of mind which made him disregard fame, made him impatient of an undeserved reproach." *

**June 20. Resolutions of the Commons**

The Commons, at their next meeting after the acquittal, resolved "that the Lords had refused them justice upon the impeachment against the Lord Somers, by denying them a Com-

* Freeholder, No. xxxix.

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against the Lords.

mittee of both Houses, which was desired, as the only proper means of settling the necessary preliminaries, and afterwards by proceeding to a pretended trial of the said Lord, which could tend only to protect him from justice by colour of an illegal acquittal, and that the Lords had thereby endeavoured to overturn the right of impeachment lodged in the House of Commons by the ancient constitution of this kingdom, for the safety and protection of the people against great men, and had made an invasion on public liberty by holding out a prospect of impunity to the greatest offenders, and that if the supplies necessary for preserving the public peace and maintaining the balance of power in Europe shall be withheld, the whole blame must be ascribed to those who have used their utmost endeavours to make a breach between the two Houses to escape from the just punishment of their own enormous crimes."

Answer of the Lords.

The Lords, with more dignity, merely intimated in answer to this message, that "they had appointed a day for the trial of the Earl of Orford;" and, when the joint committee was again demanded, saying that "this showed that the Commons never intended to bring any of their impeachments to trial." The impeached Lords were accordingly all acquitted, parliament was prorogued, and this Ultra-Tory House of Commons never met again — events arising which brought about a reaction on the liberal side, and enabled the King successfully to appeal to the nation in support of the liberties of Europe.*

Letter from Shrewsbury to Somers.

Lord Somers's early friend, Shrewsbury, hearing of these transactions while resident at Rome, thus addressed him:— "I cannot help referring to my old opinion, which is now supported by more weight than I ever expected, and wonder that a man can be found in England who has bread, that will be concerned in public business. Had I a son, I would sooner breed him a cobbler than a courtier, and a hangman than a statesman."

Swift, starting as a zealous Whig, published soon after the prorogation his "Discourse on the Contests and Dissensions

* 5 Parl. Hist. 1243. 14 St. Tr. 234—350. Burnet, iii. 366—386. 2 Ralph, 955. 968.

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Swift's defence of Lord Somers and the Whigs.

between the Nobles and the Commons in Athens and Rome, with the Consequences they had upon both those States."* Having been flattered by the condescension of William, who had shown him, in the garden at Moore Park, "how to cut asparagus in the Dutch way," and hoping for promotion in the Church from the return of the Whig party to power, he strove to damp the warmth of the Commons by showing that their measures had a direct tendency to bring on the tyranny which they professed to oppose, although afterwards, when he had gone over to the Tories, he designated William as "a new King from a Calvinistic republic," and malignantly slandered those whom he now most lavishly commended. In this work he shadowed forth the impeached Lords in the character of Athenians,—Somers as Aristides—Orford as Themistocles—Halifax as Pericles, and Portland as Phocion. Thus he flatters the same person whom he so grossly libelled in the "Examiner," and in the "History of the Last Four Years of Queen Anne:" "Their next great man was Aristides. He was a person of the strictest justice, and best acquainted with the laws as well as forms of their government, so that he was in a manner CHANCELLOR of Athens. This man, upon a slight and false accusation of favouring arbitrary power, was banished by ostracism, which, rendered into modern English, would signify that they voted 'he should be removed from their presence and councils for ever.' But, however, they had the wit to recall him, and to that action owed the preservation of their state by his future services. For it must be still confessed in behalf of the Athenian people, that they never conceived themselves perfectly infallible, nor arrived to the heights of modern assemblies, to make obstinacy confirm what sudden heat and temerity began. They thought it not below the dignity of an assembly to endeavour at correcting an ill step, at least to repent, though it often falls out too late." Somers's late colleagues are equally lauded, and proclamation is made that,

* It is supposed that he had before *written* "The Tale of a Tub," and "The Battle of the Books," but this was his first prose *publication*. Some years before he had printed some bad Pindaric odes, which called forth the observation from Dryden, "Cousin Swift, you will never be a poet."

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having been treated most unjustly, England's only chance of struggling against the difficulties which thickened round her, was to replace them in the offices which they had so ably and virtuously filled.

This "Discourse," however ingenious, made but little impression on the public mind. There seems reason to think that the people madly took part with the House of Commons, and there was real danger, not only to the tranquillity, but even to the independence of the country. One section of the dominant Tories would have been contented to support the "Act of Settlement," they themselves possessing office; but another section, wealthy and powerful, still adhered to the doctrine of "divine right," and wished to expiate the "sin of the Revolution" by recalling King James. Still farther, the grandson of Louis XIV., having quietly mounted the throne of Spain, had been recognised by several European states, and even the liberal party in England seemed indisposed to make any effort with a view to check the career of France towards universal empire.

Sept. 16. 1701. Death of James II. Louis XIV. recognises his son as King of Great Britain.

But the face of affairs all over Europe was suddenly changed on the death of James II., by France recognising his son as King of Great Britain. Historians have been greatly at a loss to account for this insane step on the part of Louis XIV., to which may be traced all his subsequent misfortunes. Some say that he was influenced by the dying entreaties of the exiled monarch; others, by a promise of Madame de Maintenon to Queen Henrietta Maria; and others, by a declaration of the Dauphin, that "it would be disgraceful for the Bourbons to desert the Prince of Wales, who was not only lineally entitled to the throne of England, but was of their own blood." The truth probably is, that Louis was quite intoxicated by the brilliant success of his own crooked policy respecting the Spanish succession, and the rapture with which it had been received in France, where the people, not presaging the calamities by which they were destined to expiate the perfidious violation of the peace of Ryswick, became delirious with pride and delight, as if a great private estate had been suddenly bequeathed to every in-

dividual in the kingdom.* The "Great Monarch" thought that substantially universal empire was already gained, and that England, as a province, he might dispose of at his pleasure. He therefore ordered James III. to be proclaimed King, pretty much as the English Governor General of India announces his intention to restore the son of an exiled rajah to the musnud.

Effect of this intelligence in England.

The news of this proceeding caused an unexampled sensation in England. Even Jacobites, who would have been charmed to have the true heir spontaneously recalled, were hurt at the thought of his being imposed upon the nation by a foreign power, and all ranks and persuasions enthusiastically rallied round the throne of William. He now formed the GRAND ALLIANCE which led to the victories of Marlborough. From the change in the public mind at home, he was likewise pleased with the prospect of getting rid of Rochester, who had been forced upon him as minister, and of again putting himself into the hands of the Whigs. Sunderland now sincerely attempted to negotiate Somers's recall, and a coalition between the more enlightened of both parties. In a letter, written to be laid before the King †, he said, "The Tories will not be satisfied without ruining my Lord Somers, nor the Whigs without undoing the ministers, in which the latter think they have the whole nation on their side. But, at last, what can the King do? He must certainly do what may determine him to take his measures. For example, let him come into England as soon as he can, and immediately send for my Lord Somers. He is the life, the soul, the spirit of his party, and can answer for it; not like the present ministers, who have no credit with theirs, any further than they can persuade the King to be undone. When his Majesty speaks to my Lord Somers he ought to do it openly and freely, and ask him plainly what he and his friends can do and will do, and what they expect, and the methods they propose. By this the King will come to a judgment of his

Reaction in favour of the Whigs.

Lord Sunderland labours for the restoration of Lord Somers.

* Addison who was in Paris at the time was obliged to fly to another country, saying, "The French conversation begins to grow insupportable; that which was before the vainest nation in the world is now worse than ever."

† September, 1701.

affairs, and he may be sure that my Lord Somers will desire nothing for himself, or any of the impeached Lords, but will take as much care not to perplex the King's business as can be desired; and if he can do nothing his Majesty shall like, he will remain still zealous and affectionate to his person and government." The King, in consequence addressed a short note to Lord Somers, from Loo, accrediting Lord Galloway as a confidential agent, and assuring him of the continuance of his friendship. * In consequence of these negotiations, Somers prepared Heads of Arguments to induce the King to call a new parliament †, and on the 10th of November the old parliament was dissolved, that on this unexpected turn of affairs an appeal might be made to the nation.

* J'ay chargé Mr. Gallway de vous parler de ma part avec beaucoup de franchise. J'espère que vous adjouterez une entière créance à ce qu'il vous dira: et que vous voudrez bien avec la mesme franchise sans aucune reserve, et estre persuadé de la continuation de mon amitié." Lord Sunderland, at the same time, wrote to Lord Somers: "The King is resolved to discourse fully and plainly with all the good inclinations possible, and knows that the two friends are of a mind in every particular."—*Hard. Stat. Pap.* ii. 446. 452, 453.

† This very elaborate paper is extant in Lord Somers's handwriting. I copy the commencement of it:—

"The present ferment and disposition of the nation.
1st, Art of government in England, in watching and using such opportunities.
2d, These opportunities do not last.
3d, Neglect of making use of them always must turn to disadvantage.
1. By disobliging the zealous.
2. Encouraging the ill-meaning.
3. Creating jealousies of the King and his measures."

He goes on with many divisions and subdivisions, urging against the existing Parliament that "many were engaged for the Prince of Wales; and that, although they pretended that war with France was inevitable, they were against it in their hearts." To the objection that the Tories promised to support the King, he says: "They can give no security but their bare promise. To trust them is to put the fate of Europe in their hands. Neither their will nor their power to be depended upon. Not their will, if it can be considered how their party is composed, for without the professed Jacobites they are nothing. Will the King trust to a majority made up of Jacobites, to make effectual provisions against France and the Prince of Wales? They can no more be depended on now than last year, when, as they pretended, they could not govern their own party."—In another paper, concocted about the same time between Lord Sunderland and Lord Somers, to be laid before the King, there is this humiliating confession: "The Tories are better speakers than the Whigs in the House of Commons; therefore, in the beginning, the Whigs ought to have some remarkable advantage, which may give them that superiority which may help them to conduct the affairs through the rest of the session." In the House of Lords, on the contrary, the good speaking was with the Whigs. There was no Tory Bishop to answer Burnet, or Tory law Lord to pit against Somers.

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The elections went very favourably. The King's speech at the opening of the Session was prepared by Somers, and is pronounced by Burnet to be "the best this, or perhaps any other Prince, ever made to his people."* I copy a few of the more striking passages of this composition, which is as remarkable for its simplicity as for its spirit:

Dec. 31. 1701.

"My Lords and Gentlemen, I promise myself you are met together full of that just sense of the common danger of Europe, and the resentment of the late proceedings of the French King, which has been so fully and universally expressed in the loyal and seasonable addresses of my people. The owning and setting up the pretended Prince of Wales for King of England is not only the highest indignity offered to me and the nation, but does so nearly concern every man who has a regard for the Protestant religion, or the present and future quiet and happiness of his country, that I need not press you to lay it seriously to heart, and to consider what further effectual means may be used for securing the succession of the Crown in the Protestant line, and extinguishing the hopes of all pretenders, and their open and secret abettors. By the French King placing his grandson on the throne of Spain, he is in a condition to oppress the rest of Europe, unless speedy and effectual measures be taken. Under this pretence he is become the real master of the whole Spanish monarchy; he has made it to be entirely depending on France, and disposes of it as of his own dominions; and by that means he has surrounded his neighbours in such a manner, that, though the name of peace may be said to continue, yet they are put to the expense and inconvenience of war. This must affect England in the nearest and most sensible manner in respect to our trade, which will soon become precarious in all the valuable branches of it; in respect to our peace and safety at home, which we cannot hope should long continue, and in respect to that part which England ought to take in the preservation of the liberty of Europe. It is fit I should tell you the eyes of all Europe are upon this Parliament; all matters are at a stand till your resolutions are known, and therefore no time ought to be lost.

* 3 Burnet, 409.

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You have yet an opportunity, by God's blessing, to secure to you and your posterity the quiet enjoyment of your religion and liberties, if you are not wanting to yourselves, but will exert the ancient vigour of the English nation; but I will tell you plainly, my opinion is, if you do not lay hold of this occasion, you have no reason to hope for another. I should think it as great a blessing as could befall England if I could observe you as much inclined to lay aside those unhappy, fatal animosities which divide and weaken you, as I am disposed to make all my subjects safe and easy as to any, even the highest, offences committed against me. Let me conjure you to disappoint the only hopes of our enemies by your unanimity. I have shown, and will always show, how desirous I am to be the common father of all my people; do you, in like manner, lay aside parties and divisions; let there be no other distinction heard of amongst us for the future but of those who are for the Protestant religion and the present establishment, and of those who mean a Popish prince and a French government."* This speech drew forth not a formal echo, but a manly pledge of support from both Houses: the treaties of alliance were approved of, a liberal supply was voted, and an act passed to attaint the pretended Prince of Wales if he should land in England.

Prospect of Lord Somers being restored to his office.

William began to get rid of some of his Tory ministers, and it was confidently expected that Lord Somers would soon be again his Chancellor, and avowedly his chief adviser. But our illustrious deliverer having given this impulse to the national feeling, and laid the foundation of national triumph, approached the termination of his earthly career.

Death of Will. III.

His health had been long declining, the injury he received by a fall from his horse greatly aggravated his complaints, and on the 8th of March, 1702, he expired in the 52d year of his age, and the 14th of his reign.

* 5 Parl. Hist. 1329.

# CHAPTER CX.

## CONTINUATION OF THE LIFE OF LORD SOMERS TILL HIS APPOINTMENT AS LORD PRESIDENT OF THE COUNCIL.

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Prejudices of Queen Anne against Somers.

THE national misfortune of the King's death fell with particular severity on the Whigs, at the moment when they had confidently reckoned on returning to office in a body. Anne, when young, had been told that they were republicans and atheists, and she had entertained for them a strong distaste, personal, political, and religious. The Whig Ex-chancellor was particularly obnoxious to her. He had been the confidential adviser of her brother-in-law, from whom she had been much estranged; he was suspected by her of crossing her wishes to be put into the council of regency, and to have a separate establishment as next heir to the crown; and his views respecting church affairs had been grossly misrepresented to her. Although he signed the recognition of her title previous to her being proclaimed, and he was ready to have shown her every mark of loyal respect, she at once announced to the confidential friends who gathered round her on her accession, that she would not even admit him into her presence. Accordingly, he was not allowed to be sworn of her Privy Council, when, along with the Privy Councillors of the late King, he attended to take the oaths as is usual at the commencement of a new reign; and his name was struck out from the commission of the peace in every county in England.* What he probably felt more

He is excluded from the Privy Council, and from the commission of the peace all over England.

* Historians all say that his name was struck out of the list of Privy Councillors, which is substantially true, as he was not allowed to be sworn of the Council to the new Sovereign. When the commissions of the peace were renewed, his name which, as Chancellor and Privy Councillor, had been in all, was, by the express orders of the government, omitted from all — even from the commission for his native county. This, although sometimes denied, appears clearly by a letter from Secretary Vernon to the Duke of Shrewsbury, dated March 31. 1704. Having mentioned an address of the Lords to the Queen, praying "that such as had been put out of the commission since the Queen's accession to the throne should be restored," he adds: "When this matter was debated in the House of Lords yesterday, my Lord Keeper (Wright) had many rubs given him about persons put in and left out of the commissions; particu-

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severely as a special slight to him,—orders were given to discontinue the payment of the pension which he had procured for Addison. Thus, instead of being again in possession of the Great Seal, with the patronage of the Crown, and the power of Prime minister, he found himself proscribed from office, disgraced as far as the spite of the Court could disgrace him, and held up to the world as a man whose good opinion was a bar to all favour.

His glorious conduct as an Ex-chancellor.

Now, however, begins what may be considered the most praiseworthy and the most truly glorious portion of the life of Somers. When he found that Godolphin and Marlborough, judging that it would be most for their own advantage to adopt the measures of the Whigs, at the risk of offending the party which had brought them into power, were resolved to fulfil the engagements of the "Grand Alliance," he strenuously supported their foreign policy, and instead of seeking to embarrass them, he did every thing in his power, both in and out of parliament, to enable them successfully to carry on the war. Banished from the Court, he was a main prop of the government. He was diligent in his attendance in the House of Lords, and he lost no opportunity of supporting the honour of the country, or protecting religious liberty against the inroads of the dominant faction. *

In politics.

In literature.

Apart from politics, his conduct is still more to be admired, as being more rare among English lawyers, who generally, while in practice, or in office, devote themselves exclusively to professional avocations, and in their retirement, left without mental resources, waste their declining years in frivolous occupations or in vain regrets.† Lord Somers presents the

larly that my Lord Somers was left out of the commission of the peace for Worcestershire, which they told him was the more scandalous, since that Lord had sat on that woolsack with more reputation than those that came either before him or after him."—*Vern. Corresp.* iii. 257.

* From a reference to the Journals of the Peers, I find that the House hardly ever met without his being present. The two last almost always are, "D^s. Somers," "D^s. Halifax," till a few years after there were some new creations.

† There has been at least one splendid exception. A right reverend Prelate, whose name, if I were at liberty to mention it, would be considered a grace to my page, thus writes to me: "I remember travelling, many years ago, with Sir S. Romilly one stage in his carriage, which was filled with the best books of the general literature of the day. To a remark from me that I rejoiced to see that he found time for such reading, he answered, 'As soon as I found I was to be a busy lawyer for life, I strenuously resolved to keep up my habit of non-

*beau idéal* of an Ex-chancellor, — active in his place in parliament when he could serve the State, and devoting his leisure to philosophy and literature. He had long been a Fellow of the Royal Society: he now regularly attended its meetings, and assisted in its transactions; and being elected the President, he did every thing in his power to extend its credit and its usefulness. Having held this distinguished post five years, he gracefully resigned it to Sir Isaac Newton. He made a noble use of the wealth he had honourably acquired, by purchasing a fine collection of paintings, engravings *, medals, and books — becoming possessed of almost every edition of the Bible that had ever been printed, and of an immense mass of tracts, printed and manuscript, on English history and antiquities. He lived much with literary men, and liberally aided such as were oppressed by poverty. On Addison's return from the Continent, he cordially embraced him; he introduced him into the Kit-Cat Club †, and

His continued kindness to Addison.

professional reading; for I had witnessed so much misery in the last years of many great lawyers whom I had known, from their loss of all taste for books, that I regarded their fate as my warning.'"

* He first brought into notice Vertue, the celebrated engraver, by employing him to engrave a portrait of Archbishop Tillotson; and he made the fortune of Simon Dubois by sitting to him. This painter had previously supported himself by selling, as originals, copies he had made of the old masters — saying that "he was justified in being revenged of the public for not sooner discovering his own genius." — *Life of Vertue by Horace Walpole*, Works, iv. 120.

History of Kit-Cat Club.

† Somers was an original member of this club, which is said to have been founded by Jacob Tonson, the bookseller. It derived its name from meeting at the house of CHRISTOPHER CAT, in Shire Lane, close by Temple Bar, famous for his mutton pies. Witness the well-known line:

"Immortal made as Kit-Cat by his pies;"

and the distich:

Hence did th' assembly's title first arise,
And Kit-Cat wits sprung first from Kit-Cat pies.

Other accounts state that "Cat" was not the surname of the master, but was taken from the sign of his house, the "CAT and Fiddle.

All the Whigs who pretended to wit belonged to this club. They dined so late as three in the afternoon, and often sat till six. In the summer months they met at "The Upper Flask" on Hampstead Heath. To this Sir Richard Blackmore alludes in his poem, entitled "The Kit-Cat," which, strange to say, was fashionable in the reign of Queen Anne:

"Or when, Great Kit Cat, thou art pleas'd to lead
Thy sons to feast on Hampstead's airy head —
Hampstead that, towering in superior sky,
Now with Parnassus does in honour vie."

Sir Godfrey Kneller painted the members of this club somewhat less than a three-quarters, and larger than a half-length — a size which painters have ever since denominated a Kit-Cat. Bolingbroke afterwards, in proposals for forming

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visited him in his garret in the Hay Market, where the poor poet was found out by Godolphin to celebrate the victories of Marlborough. Lord Somers was rewarded by the Dedication of his friend's "Travels in Italy;" and as he seemed now for ever banished from office, he could have no misgivings as to the sincerity of such sentiments as these, from the author of "the Campaign," with the praises of which all England was ringing. "I had a very early ambition to recommend myself to your Lordship's patronage, which yet increased in me as I travelled through the countries of which I here give your Lordship some account: for whatever just impressions an Englishman must have of your Lordship, they who have been conversant abroad will find them still improved. It cannot but be obvious to them, that though they see your Lordship's admirers every where, they meet with very few of your well-wishers at Paris or at Rome. And I could not but observe when I passed through most of the Protestant governments in Europe, that their hopes or fears for the common cause rose or fell with your Lordship's interest and authority in England." *

Among the other wits of Anne's reign, he was likewise on the most familiar footing with Swift — who as yet having nothing to hope from the Tories, dedicated to him "the Tale of a Tub," stating how "the bright example of his patron's virtue would adorn the history of the late reign," describing him as "the sublimest genius of the age for wit, learning, judgment, eloquence, and wisdom," and celebrating

a rival club, squeamishly says: "The first regulation, and that which must be inviolably kept, is decency. *None of the extravagance of the Kit-Cat* — none of the drunkenness of the Beef Stake — is to be endured." "The OCTOBER" must have been very dull, consisting chiefly of Tory foxhunters; but "the Brothers," enlivened by the sallies of the renegade Swift against his old Whig friends, must have been very delightful society. — See Malone's Life of Dryden, p. 735.; History of Clubs, p. 368.; Steele's Correspondence, vol. ii. 344.; Noble's Continuation of Grainger, iii. 431.

* In a "Life of Somers," published while Addison was alive, and in the elevated station of Secretary of State, the author says: "I believe the learned, ingenious, and polite Mr. Addison will not take it amiss to have it told that his Lordship took him into his protection and favour when he first came to town; that he obtained a handsome pension for him before he went to travel, and afterwards recommended him so promptly to the Lord Halifax, that he passed through several profitable and honourable employments till he was made as happy in his fortune as in his fame." — Life, 1716, p. 110.

him for "his discernment in discovering, and readiness in favouring deserving men."

Somers's edition of Milton.

The "Spectator' had not yet criticised PARADISE LOST, and from the personal prejudices entertained against the author, the beauties of this divine poem were hitherto little known to the English public. Lord Somers himself superintended a new edition of it, which was published by Tonson, and at his own expense brought it out, with a pure text, with valuable notes, and with every advantage of decoration.

His house in town, and his country residence, Brookmans in Hertfordshire *, were the resort of the most distinguished of all ranks of society, and displayed the intermixture of aristocracy and genius, but seldom in any age witnessed in England. He himself, by his courtesy, his affability, his gaiety, and his taste, was the charm of this brilliant circle. Now, indeed, "he had ample amends for the loss of the honours and fatigues of office," † and now he earned the compliment paid to him, which is more valuable than any praise of a judgment pronounced from the bench, or a speech made in parliament, "If he delivered his opinion of a piece of poetry, a statue, or a picture, there was something so just and delicate in his observations, as naturally produced pleasure and assent in those who heard him." ‡

But he was ever ready to sacrifice these calm delights for the *mêlée* in the House of Lords, when duty called him thither.

Nov. 1702. His opposition to the Occasional Conformity Bill.

The first parliament summoned by Queen Anne, assembling in the end of the year 1702, the Tories were found to have an immense majority in the House of Commons; and, to perpetuate their power, they introduced a Bill "to prevent occasional conformity," whereby all borough elections for members of parliament, as well as all holders of office, were subjected to the Test Act; all persons who had once taken the sacrament according to the rites of the Church of

* This place, formerly called Bell-Bar, is in the parish of North Mymms, not far from Hatfield. Lord Somers bought it from Sir Andrew Fountaine. "It has a most delightful prospect from one side into Epping Forest; from the other towards St. Alban's and the counties of Bedford and Bucks. The house itself is handsome and well situated."—*History of Hertfordshire*, 1728, p. 64.

† Life, p. 52.

‡ Freeholder, by Addison, No. 39.

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England, were made liable to very high pecuniary penalties, and eventually to transportation, if they afterwards entered a dissenting place of worship; and all offenders were disqualified thereafter for voting or holding office, without reconciliation to the Church, and a long penance. The Bill rapidly passed the Commons by great majorities; but it excited a fierce contest in the Lords. It was there supported (I believe reluctantly) by Godolphin and Marlborough, to please the Queen and the clergy. Nay, Prince George of Denmark, who, as Lord High Admiral, had received the sacrament according to the rites of the Church of England, and yet attended a Lutheran chapel of his own, — so that he was himself "an occasional conformist,"—voted in favour of it.*

But Lord Somers, indifferent to the obloquy he might incur, gallantly led the opposition against it, being ably seconded by Lord Halifax and Bishop Burnet. Instead of trying directly to throw it out, they considered the more judicious plan of defeating it would be to introduce amendments by way of mitigating its severity — one being to do away with the future disqualification, and another to reduce the penalty for a first offence from 100*l.* to 50*l.* The amendments being carried in the Lords, were indignantly dissented to by the Commons, who were not only chagrined that the stringency of their measure should be at all impaired, but were beginning to set up the most preposterous pretension, that bills imposing penalties by way of punishing offenders were money bills, and could not, without a breach of privilege, be altered by the Lords.

"Free Conference" upon this subject.

After some conferences, conducted by written statements, "it came to a FREE CONFERENCE in the Painted Chamber, which was the most crowded that ever had been known, so much weight was laid on this matter on both sides." † Lord Somers was the chief manager for the Lords. The managers for the Commons were rather moderate in their language, using such arguments as these: "That if a national church be necessary, the only effectual way to preserve it is by

* The poor prince, however, was acting under petticoat compulsion; and when the division took place, he said to Lord Wharton, who was on the liberal side, "*My heart is vid you.*" — *Tindal.*

† 3 Burnet, 459.

keeping the civil power in the hands of those whose practice and principles are conformable to it; that when they enacted that all officers should receive the sacrament according to the rites of the Church of England, it never was imagined that a set of men would rise up whose consciences were too tender to obey, but hardened enough to break through any laws; and that those men may effectually be kept out of offices who have shown they never wanted the will, when they had the power, to destroy the Church — that the bill does not trench on true toleration, and does not deprive the Dissenters of any rights which they ought to enjoy."

Arguments of Somers.

Lord Somers, in the name of his House, had the boldness to say, "That the Lords do not consider going to a dissenting meeting to be *malum in se*, for that Dissenters are Protestants, and differ from the Church of England only in some little forms, and therefore the Lords think loss of office a sufficient punishment, without an incapacity, which should be reserved for capital offences, and that there was no greater reason to visit this act with incapacity than to make it felony: that the Dissenters are well affected to the present constitution, and hearty enemies to the Queen's and kingdom's enemies: that of late, in the great extremity of the Church, they joined with her, and as they were when the Bishops were in the Tower, they have since continued to behave themselves: that the Toleration Act ought to be upheld, as it had contributed much to the security and reputation of the Church, and had produced so good a temper among the Dissenters: that the Lords think they have sufficiently shown their dislike of occasional conformity, by allowing that the guilty person shall not only lose his office, but be liable to a reasonable fine: that this Bill disturbs the settlement which took place on the abdication of James, and carries disqualification farther than ever was before attempted: that the Lords, allowing that no man can claim a place by birth-right, yet conceive that giving a vote for a representative in parliament is the essential privilege whereby every Englishman preserves his property; and that whatsoever deprives him of such vote, deprives him of his birth-right." The reasoning

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employed is very long and very cogent, but it made no impression on the Commons, who still insisted on the Bill passing as they had framed it. The most serious apprehensions were now entertained of a fatal collision between the two Houses, and of the supplies for carrying on the war being stopped. Some peers, from terror, went over to the bigots, but Somers remained firm. Such exertions were made on both sides, that there were 130 Lords in the House — the greatest number that had ever mustered. When it came to the final struggle whether the amendments should be adhered to? the numbers were so nearly equal, that, on three divisions, the affirmative was carried but by one voice, and it was by a different person on each division. So the bill was lost.*

Bill defeated.

Nov. 1703. Attempt of Commons to tack this bill to a money bill.

Dec. 1704.

But in the following year the battle was renewed. As soon as the Session began, the Commons again sent up "a Bill to prevent occasional conformity." Somers now took a bolder course, and he procured its rejection on the second reading by a majority of 71 to 59.† Still another effort was made in the last Session of this ultra Tory House of Commons, and now an expedient was proposed whereby success was considered certain — which was to "*tack*," the occasional conformity bill to a money bill so that it must pass, or the supplies be stopped, the war interrupted, and the whole nation thrown into confusion. But Godolphin and Marlborough were now seriously alarmed; the "*tack*" was denounced as a scheme for depriving the Lords and the Queen of their legislative powers, and the whole influence of the Government being exerted against it, it was lost by a majority of 250 to 134. Nevertheless the Bill was easily carried through the Commons, as a separate measure. When it came to be debated in the Lords, the Queen, who in her heart favoured it much, was present, and the speakers on both sides exerted themselves to the utmost in the hope of convincing her. Somers was supposed only to have confirmed the bad opinion she had entertained of him; but the Bill was thrown out by

* 3 Burnet, 463. 6 Parl. Hist. 59—92.

† 5 Parl. Hist. 171. It is curious to observe, that Godolphin and Marlborough, although they were well known now to disapprove of the bill, not only voted for it, but, to please the Tories on this point, signed the protest against its rejection.

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a majority of 71 to 50[*], and the persecution of Dissenters subsided for some years.

Occasional Conformity Bill finally rejected.

Parliamentary privilege.

We next find Lord Somers struggling against an attempt of this same ultra-Tory House of Commons, by an abuse of parliamentary privilege, to encroach on the just rights of the subject. There had been a gross violation of the elective franchise in many boroughs in England, the returning officers making corrupt bargains with the candidates, as they considered themselves sure of impunity if they sent up representatives who would vote with the dominant majority.

The Aylesbury case.

Petitions to the House of Commons complaining of undue returns being found wholly unavailing, at last one Ashby, an elector of Aylesbury, brought an action against the bailiffs who are the returning officers of that borough, for having maliciously rejected his vote at an election of members of parliament. The plaintiff having clearly made out his case before a jury, he recovered a verdict with damages and costs. But a motion was made in the Court of Queen's Bench in arrest of judgment, on the ground that such an action was not maintainable; and judgment was arrested by the opinions of the three puisne Judges against that of Lord Chief Justice Holt. A writ of error was therefore brought in the House of Lords, and the Judges were called in. They were divided—of those who attended five being for affirming and four for reversing.

Opinion of Lord Somers.

The present Lord Keeper, not being a peer, had no voice, and the House eagerly listened to the opinion of Somers, the only law Lord then existing. Reasoning (as I think) unanswerably, he said that "although the action was new, it rested on well-established principles of law; that the plaintiff, having been deprived of the exercise of his franchise by the *malicious* act of the defendants, (who must now be taken corruptly to have rejected the vote, knowing it to be good,) was entitled to legal redress for the wrong he had suffered, and that the objection that such an action infringes the privileges of the House of Commons

Judgment against the House of Commons.

* For the second reading, peers present, 50; proxies, 21. Against, peers present, 23; proxies, 17. 6 Parl. Hist. 368.; 4 Burnet, 87—93.

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Jan. 14. 1704.

could not be supported, for while that House alone could rightfully determine who is duly returned as representative, the elective franchise was a common law right regulated by statute, on which a Court of common law was competent to determine."—In those days, and long after, all peers voted upon judicial as well as on political questions, and on the motion of Lord Somers the judgment was reversed by a majority of fifty to sixteen.

Vote of the Commons of breach of privilege.

The Commons were thrown into a transport of rage by this decision, and after a long debate, in which Mr. Walpole (afterwards Sir Robert) in vain tried to bring the House to reason, by showing the fatal consequences which would follow from declaring that returning officers are irresponsible, a vast majority *, encouraged by Harley, the Speaker, resolved "that the qualification of an elector is not cognizable elsewhere than before the Commons of England in Parliament assembled; that Ashby, having commenced an action against the bailiffs of Aylesbury for rejecting his vote, is guilty of a breach of privilege; and that whosoever should in future commence such an action, such person, and all attorneys, counsellors, or serjeants-at-law soliciting, prosecuting, or pleading in any such case, are guilty of a high breach of the privileges of this House." †

March, 1704. Counter-resolutions of the Lords.

The Lords thereupon appointed a Committee to consider what was fit to be done, and after an admirable report, from the pen of Lord Somers, defending their judgment, came to counter-resolutions, "that the assertion that a person wrongfully hindered from giving his vote for the election of members of parliament, by the officer who ought to take it, is without remedy by the ordinary course of law, is destructive of the property of the subject, is against the freedom of elections, and manifestly tends to encourage corruption and partiality; that the vote against Ashby, after he had,

* 215 to 97.

† It should be borne in mind, that this resolution purported to declare a question of law clearly within common law jurisdiction; and further, that it never was pleaded in any of the subsequent actions; so that these proceedings do not afford (as has been supposed) an instance of a resolution of the House of Commons, on a question of parliamentary privilege, being overruled by the Courts of law, although they do afford an instance of privilege being grossly abused. — *See Lord Campbell's Speeches*, 242.

in the known and proper methods of law, obtained a judgment for recovery of his damages, is an unprecedented attempt upon the judicature of parliament, and is in effect to subject the law of England to the vote of the House of Commons; and that terrifying electors, unjustly deprived of the right of voting, from bringing actions in the ordinary course of law, and attorneys, counsellors, and serjeants from soliciting, prosecuting, and pleading in such cases, by voting their doing so to be a breach of privilege, is manifestly assuming a power to control the law and to pervert justice."

April, 1704. Prerogative.

Hostilities between the two Houses were suspended by a prorogation; but encouraged by these resolutions, which were framed by Lord Somers, Ashby levied his damages, and several more actions of the same sort were commenced by Paty, and other electors of Aylesbury.

Nov. 1704. War renewed between the two Houses.

When parliament again met, the House of Commons, passing over the offence of Ashby, immediately imprisoned Paty and the other Aylesbury men who had brought the fresh actions. A writ of *habeas corpus* was sued out in the Court of Queen's Bench for their discharge. Holt was carried away, by excusable indignation, to hold that they were entitled to be liberated; but he was properly overruled by the other Judges, on the ground that the Court had no power to examine a commitment by either House of parliament. The prisoners then petitioned the Crown for a writ of error to bring their case before the Lords, and petitioned that House that the writ of error might be ordered to issue.

In the subsequent stages of the controversy, I think that Lord Somers was wrong, although the course he recommended was extremely popular with the nation. The constitutional remedy for this abuse of privilege by the members of the House of Commons, would have been found in an enlightened public, and the power of the constituencies on the approaching general election. There never had been a writ of error in the House of Lords in a case of *habeas corpus*, and the Lords had no right to interfere with the commitments of the Commons, however tyrannical they might be. Yet Lord Somers moved various resolutions condemning the proceedings of the Commons, upon which there were various conferences between the

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two Houses, which were very ably managed by him on the part of the Lords, but which led to no practical result. The Commons next imprisoned some counsel and attorneys who had been concerned in these actions; and as no redress could be obtained in the ordinary Courts of law, the novel device was resorted to of suing out writs of *habeas corpus* returnable in the House of Lords. This was countenanced by Lord Somers; and here again I think he erred, for the independence of that House of parliament was gone whose commitments could be examined by the other, and if the precedent had been established, the Commons ever after could only have enjoyed such functions as were permitted to them by an authority which the constitution considers co-ordinate. After a cross-fire of resolutions, the Commons were so afraid that they took their prisoners from Newgate into their own immediate custody, and shut them up in "*Little Ease,*" directing the Serjeant-at-arms, who acted as their custodian, to disregard all writs of *habeas corpus* that might be served upon him. Lord Somers then drew up a most admirable statement of the whole proceedings, — which the Lords adopted, — in the shape of an address to the Queen — concluding with a prayer that "her Majesty would be pleased to give effectual orders for the immediate issuing of the writs of error." *

April 3. 1705. Result of the controversy.

The wise course was adopted — of putting an end to the session by a prorogation — whereby the prisoners were all discharged, — and, this being the third session of the parliament, — according to the triennial act it could not meet again. In the late controversy, Somers upon the whole must be allowed to have done good service to the state. He established the doctrine, which has been acted upon ever since, that an action lies against a returning officer for maliciously rejecting the vote of an elector; and he so forcibly exposed the abuse of privilege by the Commons, that he brought great unpopularity upon them for their proceedings, and they were long more moderate and reasonable in their pretensions. His

* "This was thought so well drawn, that some preferred it to those of the former sessions: it contained a long and clear deduction of the whole affair, with great decency of style, but with many heavy reflections on the House of Commons." 4 Burnet, 100.

attempt to control the commitments of the Commons by writs of error, or by writs of *habeas corpus* returnable in the House of Lords, has never been revived. There seems no longer any danger of a collision between the two Houses; but to reconcile their pretensions to stop actions brought contrary to their privileges, and the power of the Courts of law nevertheless to proceed with such actions,—is a formidable constitutional problem which still remains to be solved. *

Great difficulty still remaining.

April 5. 1705. General election. Returns favourable to the Whigs.

The violence of the House of Commons in this controversy about privilege had its just reward and correction in the reaction which was now visibly proceeding in favour of the Whigs. "The City and the body of the nation were on the Lords' side †," and the dissolution which followed was hailed with general satisfaction. The elections for the new parliament went, in many instances, against the Tories. Disappointed by the policy which Godolphin and Marlborough had pursued, they considered themselves betrayed, notwithstanding the pretended zeal of the government to carry the bill against occasional conformity,—and the enthusiasm they displayed at the commencement of the reign had entirely evaporated. The Whigs had been coalescing more and more with the government, and the returns now appeared so much in their favour, that several of them were introduced into the cabinet and into the household.

* 14 St. Tr. 695—890.; 6 Parl. Hist. 225. 376.; 4 Burnet, 96.; 2 Lord Raym. 938. 1105.; Salk. 503.; Holt, 256.; 6 Mod. 45.; Lord Campbell's Speeches, 242. 327. Some suppose, that nothing would be more easy than by a statute to define all the privileges of parliament; but (not attaching much weight to the objection that they ought to be undefined) the most serious inconvenience would arise from saying, that the two Houses have no privileges except such as the framers of the statute have specified; and from, as a necessary consequence, submitting the construction of this statute to the Courts of common law. Lord Somers saw the evil arising from the vagueness of privilege, but did not venture on a legislative remedy. Swift, in the year 1724, in a letter to Lord Chancellor Middleton, thus wrote: "Lord Somers, the greatest man I ever knew of your robe, lamented to me that the prerogatives of the Crown, or the privileges of Parliament, should ever be liable to dispute in any single branch of either; by which means, he said, the public often suffered great inconveniences, whereof he gave me several instances. I produce the authority of so eminent a person, to justify my desires that some high points might be cleared." The legislature may usefully interfere on particular points, as to confer a power of at once stopping an action brought to attach the privileges of either House,—but a "Privilege Code" I pronounce to be impossible.

† Burn. iv. 99.

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Whigs admitted to office.

The fate of the Great Seal I shall hereafter have to detail more particularly. Some think that it might now have been resumed by Lord Somers, if he had been so inclined; but this I much doubt, for he had not yet "gained great esteem with Queen Anne, who had conceived many unreasonable prejudices against him*," and, although "the Lord Godolphin declared himself more openly than he had done formerly in favour of the Whigs†," he was not yet prepared, by making their champion "Keeper of the Queen's Conscience," to shock, alarm, and quarrel for ever with his old associates.

October, 1705. Lord Somers, without office, supports the government.

Lord Somers, on this trying occasion, maintained his character for disinterestedness and magnanimity. Although upon a favourable turn for the party which he had long led, a younger man than himself, whom he had patronised, was preferred to him, he showed no jealousy or envy, but cordially rejoiced in the appointment, actually attended in the Court of Chancery when Cowper was installed, and continued to do every thing in his power to exalt the reputation and the authority of the new Lord Keeper. He was now sworn of the Privy Council; his name was restored to the commissions of the peace, from which it had been erased; and, although he was not formally a member of the cabinet, he was henceforth confidentially consulted on all the measures of the administration.

Soon after the meeting of the new parliament, he was of considerable use in quieting the alarm which Lord Rochester attempted to excite from the recent changes by his motion, "that the Church is in danger." Somers, speaking late in the debate, touched very happily upon the topics of his opponents, and thus concluded: "The nation is now happy under a most wise and just administration, the public money is justly applied, the treasury is kept in a most regular method, the public credit is in the highest esteem, the armies and fleets are supplied, the success of her Majesty's arms gives the nation greater honour and reputation than ever before known, and we have a fair prospect of bringing the war to a happy conclusion, to the immortal renown of the age and the unspeakable benefit of posterity: wherefore,

* Addison.

† Burnet.

for men to raise groundless jealousies at this time of day, it can mean no less than an intention to embroil us at home, and to defeat all those glorious designs abroad."

The question was then put, "Whether the Church is in danger or not?" and, upon a division, it was carried in the negative.*

Embarrassing motion of the Tories for bringing over the Princess Sophia.

But Lord Somers had now to counteract a very ingenious manœuvre of the Tories, which had nearly ruined the rising hopes of his party. The Whigs had always supported zealously the succession of the house of Hanover, the next Protestant heirs, and, to embarrass them, a motion was made to call over the Princess Sophia, so that she might be ready to assume the government in case of a demise of the crown. This proposal was known to be most highly distasteful to Queen Anne, who abhorred the idea of a rival court being kept in England by her successor. The Whigs must therefore, it was thought, offend her past forgiveness by agreeing to it, or, by opposing it, be guilty of inconsistency, and ruin their interest at Herenhausen. Somers dexterously saved himself and his friends from these perils. He contrived that the Queen should be present to hear herself insulted by those whom she had lately discarded from her service; and the Duke of Buckingham, falling into the snare, urged as an argument for inviting the granddaughter of James I., now in the seventy-sixth year of her age, "that the Queen might live till she did not know what she did, and be like a child in the hands of others."† When her Majesty was sufficiently satiated with Tory sarcasms, Somers moved the previous question, which was carried by a considerable majority. He then induced her to consent to the Regency Bill being brought in, which made ample provision for the quiet succession of the Hanover family, without wounding the feelings of the Queen by the presence of any of them in England, and completely restored the Whigs to the good graces of Sophia and her son.‡ This bill was strongly opposed by

Defeated by Lord Somers.

* Noes, 61; yeas, 30. The Queen was present during the whole debate, and no doubt in her heart was with the yeas. — See 6 Parl. Hist. 499.

† Conduct of Duchess of Marlborough, p. 159.

‡ 4 Anne, c. 8., entitled "An Act for the better Security of her Majesty's

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The Regency Bill.

the Tories, particularly in the House of Commons, but was at last agreed to, with some amendments to limit the powers of the Lords Justices, who were to exercise the royal authority at the commencement of the new reign, and it received the royal assent.* It was so wisely framed, that when the event contemplated happened, although the population of the country numerically would have been for recalling the exiled family, the son of Sophia succeeded as quietly to the throne as if he had been the legitimate heir, and been born and bred a Briton. On the act passing, Lord Somers wrote to the Elector, afterwards George I., the following letter, which gives an interesting view of the state of parties in England at this time:—

"London, April 12, 1706.

"Sir,—

Letter of Lord Somers to the Elector of Hanover.

"The hopes of having my letter presented to your Electoral Highness by my Lord Halifax, has encouraged me to the presumption of writing. I could not hope for a more favourable opportunity of making this humble tender of my duty, than by the hands of one who has so eminently distinguished himself on all occasions for the settling and establishing of the succession of the Crown of England in your most Serene Family, and who will be a witness, above exception, of my conduct in every part of that affair. I confess I always depended upon it, that my public behaviour should be an abundant testimony for me as to my zeal for the Protestant succession, and for promoting the war in order to reduce the power of France, which I take to be the most effectual security to that succession.

"It is with infinite satisfaction we hear that your Electoral Highness has been pleased to approve the measures taken in our Parliament this last winter. My Lord Halifax is able to give so perfect an account of every thing that has been done, and of the several means used to bring them all to bear, that I shall not pretend to enter further into that matter than by saying, I hope it will appear that nothing is now wanting to

Person and Government, and of the Succession to the Crown of England in the Protestant Line."

* 4 Burnet, 129—134.; 6 Parl. Hist. 457. 469.

the establishment of the succession that can be done by the provision of laws, and that the administration of the Government, when the succession shall take place, will be upon the same foot that it is now in the Queen's reign.

"It might have a strange appearance, that they who by a long and steady series of acting had shown themselves beyond a possibility of dispute the assertors of the succession in the person of her Electoral Highness the Princess Sophia, should in the least hesitate to agree to a proposition, that it was necessary to have the next presumptive Heir to the Crown to reside in England. But I beg leave to suggest to your Electoral Highness's consideration, that if this had been allowed for a rule, it might possibly in a little time have pressed very inconveniently upon your Electoral Highness. It was not to be imagined you would leave dominions where you were Sovereign, to reside in England before you were our King; and yet there would have been an inconvenience in rejecting an invitation of that nature, when the kingdom had before declared such a residence to be necessary. But the manner of making this proposal was above all other things the strongest objection to it. The speech with which it was introduced is in print, and so cannot be misrepresented. The turn of it was to show, first, that we could go on no further with the Dutch (which was, in effect, to say we must make peace); and next to say, the Queen's administration was hardly sufficient to keep us in peace at home, unless the next heir came over. The Queen was present at this discourse, and none can judge so well as your Electoral Highness whether this was a compliment proper to engage her Majesty to enter willingly into the invitation; and if it had been assented to with reluctance, whether it might not have given rise to unkindnesses that might in the end have proved very fatal.

"They who were afraid of entering into such an invitation (especially coming as it did from those who never till then showed any concern for the Protestant succession), thought it proper to lay hold of that favourable conjuncture to push in for those solid provisions which were evidently wanting,

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and which we hope are brought to effect by the Act that is to be farther carried on by the negotiation entered into for engaging the Allies to become guarantees of our succession, and by the treaty between the Commissioners for England and Scotland for a union of the two kingdoms, which seems to be the way now laid open for the obtaining the declaration of the same succession in Scotland which is already effected in England. I believe there is a good disposition in the Commissioners on both sides. I can absolutely promise for one, the meanest of them, that as far as my capacity and application can go, nothing shall be wanting to bring this treaty to a happy issue.

"Having already presumed to take so great a liberty, I humbly beg permission of your Electoral Highness to mention another particular, the Act of Naturalization, which some said was at least unnecessary, if not a diminution, to your most Serene Family. If this be so, not only all our present Judges, but all the lawyers of former ages, have been in the wrong. There are but two ways of making any person born out of the allegiance of the crown of England capable of enjoying inheritances, honours, or offices in this kingdom, the one complete and perfect, which is naturalization by Act of Parliament; the other imperfect, which is by letters patent of denization. That this is so, cannot be better proved than by the instance of his Highness Prince Rupert. For when King Charles I. intended to create him Duke of Cumberland, to make him capable of that title it was found necessary previously to make him a denizen by the King's grant under the Great Seal, the differences then subsisting between the King and his parliament making it impossible to procure a naturalization. But the present Act is attended with all possible marks of honour and respect to the Queen and nation. It extends to all the posterity of her Royal Highness the Princess Sophia, *born, or hereafter to be born, and wheresoever they are born, which is a privilege that was never yet granted in any case till in this instance.*

"It is only from your Electoral Highness's eminent good-

ness that I can hope for pardon for this tedious address. I am, with the most profound respect, &c.

"SOMERS."

The following answer was returned by his Electoral Highness — very encouraging to the hopes of the Whigs in a new reign: —

"June 20. 1706.

"MY LORD,

"The Lord Halifax delivered to me the letter which you was at the trouble of writing to me. I am much obliged to you for the light it gives concerning the affairs of England, but especially for the part which you have had in all that has been done there in favour of my family. The testimony of my Lord Halifax was not necessary to inform me of this. *He could give you no other in this respect, but that which is due to you by all good Englishmen who love their religion and their country.* I am not ignorant of what influence you may have amongst them, nor of the manner in which you have employed it. Nothing can give me a better opinion of the English nation than the justice they do your merit. My sentiments concerning the invitation of the successor are entirely conformed to yours, and I put all the value I ought upon the acts which the Lord Halifax brought us. He has convinced us of their importance, and hath discharged his commission as a man equally zealous for the prosperity of England, and for the interests of my family. I shall always look for opportunities of showing you how much

"I am, &c."

Addison, in his *éloge* of Somers, says, "A great share in the plan of the Protestant succession is universally ascribed to him. And if he did not entirely project the Union of the two kingdoms, and the Bill of Regency, which seem to have been the only methods in human policy for securing to us so inestimable a blessing, there is none who will deny him to have been the chief conductor in both these glorious works. For posterity are obliged to allow him that praise after his death, which he industriously declined while he was living."*

* Freeholder, May 4. 1716. No. xxxix.

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A.D. 1706.

Lord Somers is employed in negotiating the Union with Scotland.

There is no ground for saying that he *projected* the Scottish Union, for it had been proposed from time to time ever since the accession of James I.; but when great anxiety had been created upon the subject from the refusal of the Scottish parliament to concur with the parliament of England in selecting the Princess Sophia as the root of a new dynasty, the measure was chiefly intrusted to him, and by his prudence and tact it was brought to a happy conclusion. Though at present without office, and though most of the English commissioners were of higher rank, yet, from the station he had once occupied, and his great celebrity, he was the most regarded by the Scottish Commissioners, and he produced a most favourable impression upon them by the courtesy of his manners, as well as by the liberality of his sentiments. On the delicate subject of religion he quieted their fears by at once agreeing to every precaution they could suggest for the safeguard of the Kirk and the protection of their beloved Presbytery. These concessions were distasteful to the Tory party, and were highly obnoxious to the University of Oxford *, but the necessity for them being apparent, even the Queen was prevailed upon to sanction them. After the sittings of the Commissioners at the Cockpit, Whitehall, had been continued from the 15th of April to the 22d of July, — in the evening of that day the Articles were finally concluded, and next morning Somers attended the Queen at St. James's, when they were delivered to her, to be submitted to the parliaments of the two countries. When the Bill for giving effect to them was afterwards introduced into the House of Lords, he warmly defended it †, and by corresponding with the ministers and leaders of parties in Scotland, his advice materially smoothed its progress through the legislature of that country. ‡

* Wherefore, this University refused to offer an address of congratulation to the Queen when the measure was completed.

† Burnet, iv. 150. 166.; Defoe's History of the Union, 6 Parl. Hist. 567. 569.

‡ The originals of the following letters, written by Lord Somers on that occasion to the Earl of Leven, then Commander-in-Chief in Scotland, are in the valuable collection of MS. state papers belonging to the present Earl of Leven and Melville, his descendant:

The measure being carried, he afterwards conferred a great benefit upon Scotland, and upon the empire, by

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Letters of Lord Somers to the Earl of Leven.

"London, 26th Novr. 1706.

"My Lord,

"I have with very great trouble heard you have not bin very well, whch is a great misfortune to us all at so busy a time. I hope I shall soon hear yor Lop is perfectly recovered. I congratulate wth yor Lop upon the passing of the three first Articles. But not only I, but every one who hears of the tumults, are astonished at them, and I am told the Queen looks upon that behavior as the highest affront to her Governmt and the greatest indignity to Parlt, and would shew her displeasure in any manner her servts in Scotland should judge proper.

"My Lord, I doubt not you have heard from all hands of the great apprehension the freinds to ye Union here have of the making alterations in the Articles of the Union. Besides the delays whch such alterations, wn begun, will cause in Scotland, they will be yet difficulties here, and give opportunities for such delays as wee know not how to get over, and will cause the treaty to be sent back to Scotland as is apprehended here. Your freinds here think every thing they have yet heard mentioned, as what sticks with you, will be taken away by the managemt of the Commissioners of Excise, as they now collect the duties in England, or else are such things as can not be denyed by the Parlt of Brittain.

"But if you will not be persuaded to trust in Scotland, without at least making some claim to what is desired, might it not suffice, without altering the Articles, to state the matters whch are desired to be explained, in an addresse to the Queen, praying her to interpose that those matters might be comply'd with at the same time wn the treaty is ratified in England? Many of yor Lops freinds here think (if there be an absolute inevitable necessity of doing something to gratify people in Scotland who will be jealous) that this way would be more safe and more likely to prove effectual than a direct change of the Articles. I submit this to your thoughts and am, with great respect,

"Yor Lops
"Most obedient humble Servant,
"SOMERS."

"London, 26th Oct. 1706.

"My Lord,

"I return my humble thanks to yor Lop for the honor of yor letter, and the account you have bin pleasd to give of yor happy beginnings, and yet more, for your promise to let me know, from time to time, what passes. I interest myself in your prosperous proceedings very sincerely, beleiving the peace and happines of both nations to depend upon it; whch I wish with all my soul. Your great majority gives us a most hopeful prospect. I hope there will be no time lost, because delay gives the public and concealed enimies to the Union opportunities of working, and because the meeting of our Parlt will be soon coming on, the publick affairs of Europe not bearing that it should be long deferred. I am with all possible sincerety and respect,

"My Lord,
"Yor Ldps
"Most obedient and most humble Servt,
"SOMERS."

"Be pleased to let my Lord Melvil know how much I am his humble Servt, & yt I very heartily wish his health."

"London, 15 Novr. 1706.

"My Lord,

"I was in the country wn I had the favor of yor letter, wch, to use your own Phrase, I confesse I thought very full of Grievances. But your Ldp told me I was not to despair; and since I came to this place I find our freinds are all persuaded that if the friends to the Union continue firm in Scotland, it cannot fail.

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strenuously insisting upon the abolition of the Scottish Privy Council, the existence of which would for ever have pre-

And in abolishing the Scotch Privy Council.

The management of the opposers shew plainly they mean to Terrify, and I hope they will be disappointed. The Queen (as I am told) is every day more concerned the Union should take place, the violence of ye proceeding of those who are against it convincing her of ye Evident Necessity of it.

"Your Ldp was pleased to hint at some explanations, wch, if admitted, might make the passing the Treaty more easy. Since yt, I have seen a memorial wch states the particulars more largely. I assure you I would most readily endeavour to promote the agreeing to anything wch would facilitate the passing of ye Union in Scotl wch would not manifestly stop it here, for that would be alike Fatal. I have not the memorial by mee, and therefore what I shall say to yor Ldp is not likely to be in any method, but, as well as my memory will serve, I will offer some thoughts as to the several heads mentioned.

"One thing proposed is, that the two penny drink in Scotland should pay as small beer for the Excise. Wee have talk'd wth some of the Comrs. here, and also wth the Gentlemen employd in stating the Equivalent; and they assure us of two things: the first of them say, they are well informed that that sort wch is called two penny beer in Scotland is as strong as the ale yt is generally sold in all the Publick Houses in England. If that be so, than there will not be an equality of Excises, wch yor Ldp knows was the Principle wch the English Comrs thought themselves bound to proceed upon through out, and wch was the only thing could excuse them for agreeing to so very low a Quota for the land Tax. The other sort of those Gentlemen said yt ye Twopenny Drink was the general Drink in all the public Houses in Scotland, and if that was made small beer, the Excise in Scotland would fall by the Union instead of being raised, by becoming liable to the English Duties, and that it would considerably alter the Equivalent. Whatever ease can be given, or is given, in the way of Management of ye Duty in England, arises from ye Comissioners observation yt it is best for securing and ascertaining the grosse of ye Duty to be as gentle as may be reasonable in the collections; and ye reason will hold much more strongly in Scotland, and therefore it may well be depended upon yt it will be practised.

"As for the encouragement to be given upon the exportation of Oats, &c., I hope it will not be found difficult to be obtained in ye Parlt. of Great Brittain, because it seems to stand upon the same reason, as what is already Law, wth respect to other species of corn. And as yt premium does in a manner only concern some of the Maritim Counties in England, and yet was agreed to by ye whole Parlt. of England, so there is no reason to suspect but the Parlt. of Great Br. will be willing to comply with a proportionable premium to the Oates, tho' it will perhaps principally concern but one part of the United Kingdom; but yt wch makes it in a manner impossible to be an article in the Treaty is this: The calculation of the Equivalent as to the proportion of the Customs of ye two Kingdoms was made upon the neat produce of both. This Premium for Exportation in England is paid out of the Customs, and the English Customs were calculated at a neat sum, after these premiums and all other Drawbacks deducted. Now, if such premiums should be agreed to be paid out of the Scottish Customs, your Ldp. sees it will alter ye whole Equivalent, and that very considerably; so that both these things can never be called explaining, but are a manifest altering the articles.

"I remember only one other particular, wch is the apprehension of inconvenience from Importation of Oates, &c. from Ireland, wch (as I take it) is proposed to be remedied by laying a higher Duty on Irish Oates. All yt I shall say as to this (besides yt it is an alteration, and therefore to be avoided,) shall be, yt, in my opinion, matters of Trade, wch in their nature are variable, should not properly be made the subject of articles of Union, wch are to remain for ever sacred and imutable. But, on ye other side, as this is not a subject of any of the Articles, nor was touched upon in the Treaty, if any great weight

vented a cordial union of feelings and of interests between the two nations. We have deeply to lament that at the union with Ireland a different course was adopted, and it was thought fit to keep up a Lord Lieutenant and a separate administration for that country.*

Lord Somers's Act for reforming the law.

While engaged in these weighty affairs of state, and attending to the interests of literature and the fine arts, Lord Somers by no means neglected his own profession. He was warmly attached to law reform, but he was aware of the care and caution necessary to enable him to effect his object.

be laid upon it I should hope it might be got through with us. But I should wish it might be let alone, because it may give occasion for like things to be started here.

"I am quite ashamed of this tedious scrible, but I hope your L^dp. will beleive me to mean very well, and I wish I had time to express myself in fewer words. I am, with much esteem, my Lord,

"Your L^dps most obedient humble Serv^t.,

"Somers"

After all, I am afraid that the measure was successful less by the talents of Somers than by the money remitted to bribe the Scotch nobles and leading commoners, for both the Scotch and the Irish Unions were conducted on the principle then propounded by Prior —

"The end must justify the means,
He only sins who ill intends:
Since, therefore, 'tis to *combat evil*,
'Tis lawful to employ the Devil."

Notes of speech for consolidating the union with Scotland.

* The notes which he made for his speech in the House of Lords on this occasion are still preserved, and some of his observations are most applicable to Ireland at the present moment. "Heartily desirous of the union — no less desirous to make it entire and complete — not at all perfect while his political administrations subsist — the true argument for the union was the danger to both kingdoms from a divided state.—The advantage of Scotland is to have the same easy access to the Prince — to be under the immediate care of the Prince, and not to owe protection and countenance to any subordinate institution — worse state after the union if a distinct administration continue.—Obj. 'This Council is not a constitution of state and policy, but in effect a sovereign Court of Justice to see the laws effectually executed, and for preservation of the public peace.'—England could never agree with these courts that are mixed of state and justice.—We had a Privy Council in England with great and mixed powers — we suffered under it long and much." [Having touched upon the "Council of the Marches of Wales" and the "Council of the North," abolished by the Long Parliament, he continues] — "Hope Scotland, though a little further north, will be quiet and happy under the influence of her Majesty and her Council of Great Britain, unless your Lordships shall interpose another council to intercept that influence. For my part, I cannot agree to it. I wish North Britain as happy as England — I meant it should be so in the Union. — *True way to make the Union well relished is, to let the country see plainly that England means no otherwise than fairly by them, and desires they should be in the very same circumstances they are themselves.*" — Hard. St. Pap. ii. 473.

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Not carried away by a passion for temporary notoriety, he did not toss on the table of the House of Lords, under the name of "Bills," the crudities of himself or others — bringing law reform into disrepute. While at the bar, and in office, he had seen the defects in the system administered both in the common law and equity courts, and he had for some years been devoting a considerable part of his leisure to the consideration how they might be remedied. In the spring of 1706 he brought forward his bill "For the Amendment of the Law and the better Advancement of Justice." * Unfortunately we have no account of the debates on this occasion, except from the loose recollection of Burnet, who says, "The Lord Somers made a motion in the House of Lords to correct some of the proceedings in the common law and in chancery that were both dilatory and very chargeable: he began with some instances that were more conspicuous and gross; and he managed the matter so that both the Lord Keeper and the Judges concurred with him. A bill passed the House that began a reformation of proceedings at law, which, as things now stand, were certainly among the greatest grievances of the nation: when this went through the House of Commons, it was visible that the interest of under-officers, clerks, and attorneys, whose gains were to be lessened by this bill, was more considered than the interest of the nation itself: several clauses, how beneficial soever to the subject, which touched on their profit were left out by the Commons. But what fault soever the Lords might have with these alterations, yet, to avoid all disputes with the Commons, they agreed to their amendments." † I have not been able to find the original draught of the bill as introduced by its author ‡, but, notwith-

* "It was no inglorious part of this great Chancellor's life, that when removed from the administration, his labours were still dedicated to the service of the government and of his country. In this situation, above all the little prejudices of a profession, for he had no profession but that of Solon and Lycurgus, he set himself to correct the grievances of the law, and to amend the vocation he had adorned."— *Walpole's Royal and Noble Authors.*

† 4 Burnet, 140.

‡ 4 Anne, c. 16. Petitions against it were presented by the clerks of the Remembrancer's Office, the Exchequer, &c.; and it appears to have been greatly damaged in the Commons.—Com. Jour., 14th Feb.; Lords' Jour., 11th, 19th March.

standing the mutilations it underwent,—as it appears upon the Statute Book, it introduced greater improvements than our "Procedure" ever received from the Revolution till the reign of William IV. — "Whate'er is best administer'd is best," may truly be said of a juridical system, and the due distribution of justice depends much more upon the rules by which suits are to be conducted, than on the perfection of the code by which rights are defined. The scandalous abuse had been established in England of creating sinecure offices in the Courts payable by fees, some of such offices being grantable by the Crown, and some being saleable by the Judges. Nay, the Judges themselves were chiefly remunerated by fees. It was thus utterly impossible that the suitors should not be sacrificed, and that the complaints of delay and expense with which Westminster Hall rang should not be well founded. The abolition of such offices, and the payment of the Judges by fixed salaries, which we have seen accomplished, would not have been endured in that age. But Lord Somers's bill framed most admirable regulations against pettifogging, chicanery, and vexatious litigation. It compelled a party who meant to rely upon any errors of form in the conduct of an action, at once specifically to point them out, that they might be corrected; it provided that no dilatory plea should be received without an affidavit of its truth; it cured the absurd strictness by which a man could not plead payment of money after the day when it became due; it permitted persons who had been beyond seas when a cause of action against them accrued to be sued during a year after their return; it made bail-bonds given to the Sheriff available to the creditor; it prohibited the issuing of subpœnas in equity before filing a bill; and it rendered the action of "Account" effectual against executors and administrators. Farther, it provided that a defendant might avail himself of several defences to an action, whereas formerly he could only set up one, and if that by any chance failed, he was undone; it rendered lessees liable to the purchasers of their farms without the ceremony of an attornment; and it enacted that the effect of a fine of lands should not be defeated by an entry, unless an action were brought within a year. It likewise contained useful enact-

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ments respecting warrants of attorney, the probate of wills, declarations of uses and trusts, and the payment of costs both in actions at law and suits in equity.* When we consider that this "STATUTE OF JEOFAILS†" was framed by the author of the "BILL OF RIGHTS," we may truly say that there was nothing too vast or too minute for the grasp of his intellect.‡

Lord Somers recommends Freeman to the office of Lord Chancellor of Ireland.

Lord Cowper (holding the Great Seal) and all the other ministers showed the highest deference for the advice of Lord Somers on all subjects. In a life of Freeman, prefixed to his "Reports," published in the year 1742, it is said, "His eminent qualities and rare talents introduced him to the friendship and esteem of that truly noble, virtuous, and learned lawyer and statesman, the late John Lord Somers, who, in the year 1706, had so high an opinion and just judgment of Mr. Freeman's integrity and abilities, as to recommend him to the important office of Lord Chancellor of Ireland, then vacant, in which high post he was deservedly placed by his Sovereign." I have not yet discovered how Freeman conducted himself as Irish Chancellor, but Lord Mansfield and Lord Redesdale repeatedly bore testimony to his learning and his merits as a lawyer and as a reporter.

Lord Somers now drew obloquy upon himself by defending

* 6 Parl. Hist. 517. From the Report of the Committee of the Lords appointed on the motion of Lord Somers to consider of amending the law — which was the foundation of the Bill — it appears likewise to have contained enactments to allow Courts of Common law to issue commissions for the examination of witnesses, — and for making debts and all other property available to satisfy judgment creditors,—which have recently been adopted by the legislature. Lords' Jur. xviii. 68. 17th Jan. 1705. — See a minute statement of the different stages of the Bill, Parke's Hist. Ch. 275.

I have found a pamphlet, published at this time, entitled "Reasons humbly offered to both Houses of Parliament for passing a Bill for preventing Delays and Expenses in Suits in Law and Equity," showing that the Bill contained several very important clauses which had been struck out from a desire to protect profitable abuses, *e. g.* a clause to prevent frivolous writs of error; a clause for shortening decrees and orders in Equity, by forbidding recitals; and a clause for taking a Bill in Equity *pro confesso* for want of appearance.

† Statutes for the amendment of the Law were thus denominated because when the pleadings were carried on in French the pleader who had made a mistake, when he craved leave to amend, was obliged first to say, "Jeo faile." 3 Bl. 407.

‡ Lord Somers the same Session attempted most laudably to reform abuses in the passing of private Bills through Parliament, but failed, as he touched the fees to be received by the Speakers of the two Houses and by the Clerks. 4 Burnet, 140.

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the government, and, along with several other Whigs, was grossly libelled by a Dr. Brown, who was found guilty of the offence, and set in the pillory, then a very common, and hardly considered a disgraceful, punishment.* The patriotic nobleman was defended and eulogised by De Foe, who afterwards for a season countenanced the Tories, but now, in the twelfth book of his "Jure Divino," thus sung:—

Libel on Lord Somers.

> "Somers by nature great and born to rise,
> In counsel wary and in conduct wise,
> His judgment steady and his genius strong,
> And all men own the music of his tongue."

Lord Somers praised by De Foe.

Till the end of the year 1708 Lord Somers continued in his present position—without office, without a seat in the Cabinet, and, what seems very strange, not even restored to his situation as a Privy Councillor—but confidentially consulted by the ministers, and lending them all the help he could, both in and out of parliament. He was contented to witness the success of the policy of his party. The GRAND ALLIANCE which he had assisted King William to plan had produced the victories of Blenheim and Ramillies, and Louis XIV., instead of threatening the liberties of Europe, began to tremble for the fortresses by which his capital was protected. Marlborough and Godolphin had now entirely cast off the Tory party as well as Tory measures. The Whigs were in possession of all the great and almost all the subordinate offices under the crown. They not only enjoyed much popularity, but the Queen, still under the dominion of the Duchess of Marlborough, seemed to have laid aside all her prejudices against them, and to have taken them into permanent favour. The Union with Scotland being consummated, there had been a prosperous session of the first parliament of Great Britain, and a dissolution then taking place, the elections for the new parliament had gone very generally for the Whigs. A temporary gloom arose from the death of Prince George of Denmark, but this facilitated some ministerial changes which still enhanced the power of the dominant party.

Ascendency of the Whigs.

Death of Prince George of Denmark. October 28. 1708.

* 11 St. Tr. Harg. ed.

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Nov. 8. 1708.

The Earl of Pembroke succeeding as Lord High Admiral, the office of Lord President of the Council became vacant, and Lord Somers was induced to accept it. The present holder of the Great Seal had given such entire satisfaction that he could not be removed; and, from declining health and satisfied ambition, William's illustrious Chancellor had little desire to resume his old office under another sovereign.

Lord Somers President to the Council.

The announcement that he had consented to become Lord President of the Council gave general satisfaction. "The great capacity and inflexible integrity of this Lord," says Burnet, "would have made his promotion to this post very acceptable to the Whigs at any juncture, but it was more particularly so at this time; for it was expected that the propositions for a general peace would be quickly made; and so they reckoned that the management of that upon which not only the safety of the nation, but of all Europe depended, was in sure hands when he was set at the head of the councils, upon whom neither ill practices nor false colours were like to make any impression. Thus the minds of all those who were truly zealous for the present constitution were much quieted by this promotion; though their jealousies had a deep root, and were not easily removed." *

* 4 Burnet, 247–48. If we are to believe Swift when he had abandoned his old friends and was eager to malign them, Somers had long been very impatient to be taken into the government, and had thought himself very ill used by being kept out so long. "Upon the Prince's death, Nov. 1708, the two great Lords so often mentioned (Marlborough and Godolphin) who had been for some years united with the low church party, and had long engaged to take them into power, were now in a capacity to make good their promises, which his Highness had ever most strenuously opposed. The Lord Somers was made President of the Council, &c. 'It should seem to me that the Duke and Earl were not very willingly drawn to impart so much power to those of that party, who expected these removals for some years before, and were always put off upon pretence of the Prince's unwillingness to have them employed. And I remember, some months before his Highness's death, my Lord Somers, who is a person of reserve enough, complained to me with great freedom of the ingratitude of the Duke and Earl, who after the service he and his friends had done them in making the Union, would hardly treat them with common civility." But the man who would publish to the world such a confidential communication would be quite capable of misrepresenting it, and Swift is here the less entitled to credit as he states that Somers, in the same conversation, talked disparagingly of the Union, and sneered at the "Act of Security" by which the Presbyterian form of worship was guaranteed to Scotland. — *Memoirs relating to the Change in the Queen's Ministry*, written October 1714. The general opinion was that the new President of the Council was now to direct public affairs, as we may see by the

following letter from Lord Shaftesbury, author of the "Characteristics," to a friend, Nov. 20. 1708. "Somers has kissed the Queen's hand, though not directly as minister, pretty near it you may be sure: since at this time of mourning, and so sincere a mourner as the Queen is, she hardly would see a stranger, and what is more, a man so estranged from her, and so wholly off from the Court as he has been, and whom I scarcely believe she has admitted at any time to kiss her hand, he having been for certain the Prince's aversion, as you may judge by those who chiefly influenced the Prince and were the violentest enemies Lord Somers had."

# CHAPTER CXI.

## CONCLUSION OF THE LIFE OF LORD SOMERS.

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Lord Somers's conduct when again in office.

SOMERS remained President of the Council till the downfall of the Whigs, — which would probably have been averted if his advice had been followed. He agreed with his colleagues in thinking that the war ought to be carried on till the grandson of Louis XIV. should be driven from the throne of Spain*; but he would have saved them from the enormous folly of the impeachment of Sacheverell.

The first session of parliament after the new Lord President was installed passed over very quietly. The Tory party seemed annihilated, and hardly any opposition being offered to the votes for men and money demanded, or to any of the measures of government, the discussions in the House of Lords were confined to questions on the election of Scotch peers†, and the rights of foreign ambassadors.‡ Lord Chancellor Cowper and Lord Somers cordially co-operated; and although there was no Tory law lord to keep them in check, they seem to have conducted themselves with moderation; not imitating the party violence of their supporters in the House of Commons, where, in deciding controverted elections, the partiality of the Tories, so much complained of in the last parliament, was outdone.

The Whigs triumphant.

The Whigs were now in their most palmy state. The Queen never liked them in her heart, as she was adverse to religious toleration, and she would have relished highly the doctrine of the divine right of Kings, if it could have been made consistent with her own title to the throne; yet even she found it convenient for a time to dissemble, and appear to

* Thus he congratulated Marlborough on the victory of Malplaquet: "I cannot but hope this last great success will quite lower the credit of those who may wish for an ill peace, and satisfy the French King at last that he has attempted every thing possible for saving his own honour, and that it is time for him in good earnest to think of preserving France from utter ruin."

† 6 Parl. Hist. 758.

‡ 6 Parl. Hist. 792.

be reconciled to the new Lord President, for whom from the beginning of her reign till this time she had testified the most marked dislike.* He now had frequent access to her presence: he took great pains to win her, and, from his polished and deferential manners, he must have made some progress in removing her prejudices against him. All the while, however, she had secret conferences with Harley, the leader of opposition, who, on account of the principles he professed, after renouncing Whiggery, enjoyed all her confidence, — although she complained that he occasionally came to her under the influence of liquor. The correspondence of the Duchess of Marlborough gives an amusing account of the court at this juncture: — "I remember to have been at several of Lord Somers's conversations with Queen Anne to fill out their tea and wash their cups. † 'Tis certain that as soon as he got into his post, to obtain which I so often urged the Queen, he made his court to Abigail †, and very seldom came to me; and it is true that Lord Oxford and St. John used to laugh in their cups (which came out by Duke Devonshire), that they had instructed the Queen to behave so as to make Lord Somers think he should be her chief minister. She could act a part very well when her lesson was given her, and in a little time it appeared very plain to the Duke of Marlborough and Lord Godolphin, that Somers thought of nothing so much as to flatter the Queen, and went to her personally in private."

Anne's secret longing after Tory ministers was now strengthened by her quarrel with the Duchess of Marlborough, and she was impatient to be entirely emancipated from the servitude to which she had been reduced. Another danger to the administration arose from a returning wish for peace, the public being almost satiated with military glory, and discerning persons thinking that the legitimate object of the war had

* Pope says in the Rape of the Lock —

> "Where thou, great Anne, whom three realms obey,
> Dost sometimes *counsel* take, and sometimes *tea*."

But at these meetings with Lord Somers she seems to have taken *tea* and *counsel* together.

† Mrs. Masham. Lord Somers had incurred the high displeasure of the Marlboroughs by advising Lord Chancellor Cowper to refuse to put the Great Seal to the commission appointing the Duke Commander in Chief for life.

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been accomplished. But, led by men of the first talents, both for deliberation and action, with a commanding majority in both houses, and regarded with general favour on account of their brilliant success in humbling the French King, the Whig party seemed secure of the long enjoyment of power.

Foolish prosecution of Sacheverell.

And they probably would have continued undisturbed in their offices till their tenure had been confirmed by the accession of the House of Hanover, had it not been for their most preposterous prosecution of the contemptible sermon preached before the Lord Mayor of London on the 5th of November, 1709, the anniversary of the Gunpowder Plot, and published a few days after. This composition not only inculcated passive obedience and the divine right of kings, attacked the Revolution, reflected on the memory of King William, and asserted that the Church was in danger from the misconduct of her Majesty's present ministers — but (worse than all) abused several of them individually, and particularly the Lord Treasurer, under his well-known name of "VOLPONE." If they had allowed it to pass unnoticed, it would have fallen into instant oblivion; but forty thousand copies of it were sold in a few months, and it acquired more celebrity than any production of Milton or Dryden.

Opposed by Lord Somers.

Lord Godolphin was so offended by the dull sarcasms which it contained against him, that he indiscreetly called a meeting of the cabinet to consider what steps should be taken against the author. His colleagues, naturally expressing high indignation, he insanely proposed that, from the importance of the topics which the sermon handled, and the dignified station of those whom it assailed, it should be made the subject of a parliamentary impeachment. This proceeding was warmly opposed by Lord Somers, although he likewise was personally struck at by the preacher.* But all his argu-

* "There is another sort of them who are for a neutrality in religion, who really are of none, but are a secret sort of reverend Atheists, who always pretend to be of the Church, join in the herd, and will sometimes frequent our public communion. They are equally of all and of no communion; they are the Gallios that 'care for none of these things;' they can see neither sin nor danger in that ecclesiastical bugbear, as they call schism, yet talk very loud about union, comprehension, and moderation; by all which canting expressions they

ments were overruled.* By a solemn judicial proceeding in the face of the nation, the Revolution was to be defended, the principles of limited monarchy were to be vindicated, the protestant succession was to be secured, and the character and conduct of her Majesty's ministers were to be cleared from all aspersion. When the mode of prosecution came to be debated, it was perhaps thought that in the present unpleasant temper of the two houses there would be less difficulty in carrying a vote for an impeachment, than in having an indictment found "*a true bill*" by a Grand Jury,— and in obtaining a verdict of "*guilty*" from a majority of the Lords, than from a petty jury, who must be unanimous.

Question on the trial as to the sufficiency of the articles of impeachment.

Lord Somers attended daily during the trial, which lasted three weeks, but does not seem to have taken any part in it till the Lords came to consider of their verdict, when he and Lord Chancellor Cowper were thrown into a great difficulty by an objection which Lord Nottingham started, that the articles of impeachment did not set out those passages of the sermon which were complained of; and the Judges being consulted, gave it as their opinion that "in an indictment or information for a misdemeanour by speaking or writing criminal words, the particular words supposed to be criminal must be expressly specified in the indictment or information." But the noble and learned Lords suggested that the judges had delivered their opinion according to the rules of Westminster Hall, and not according to the usage of parliament. A resolution was passed "that in impeachments the House was to proceed according to the laws of the land, and the law and usage of parliament;" and upon searching the journals for precedents, Dr. Mainwaring's case was found, which occurred

mean nothing but getting money and preferment, by holding in with persons of all parties and characters, halting betwixt the diversity of opinions and reconciling God and Belial for gain." Sermon 15, St. Tr. 78.

* "The famous trial of Dr. Sacheverell arose from a foolish passionate pique of the Earl of Godolphin whom this divine was supposed in a sermon to have reflected on under the name of "VOLPONE," as my Lord Somers a few months after confessed to me; and at the same time that he had earnestly and in vain endeavoured to dissuade the Earl from that attempt." — *Swift, Memoirs relating to change in ministry.* Swift likewise in his history of the four last years of Queen Anne informs us "that he had heard from Lord Somers himself that he was against engaging in that foolish business, as foreseeing that it was likely to end in the ruin of the Whig party." See also Examiner, No. 26.

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in the reign of Charles I., and which was an impeachment for words, without setting out the words specifically. Whereupon, after a long debate, a resolution was carried, "that by the law and usage of parliament in prosecutions by impeachment for high crimes and misdemeanours, by writing or speaking, the particular words supposed to be criminal, are not necessary to be expressly specified in the articles of impeachment." Against this resolution many Lords entered a protest,— and with great reason, as it is equally important to a party accused to be fully informed of the charge against him, whatever the tribunal may be before which he is prosecuted. An acquittal on this point of form would not have been such a triumph to Sacheverell as the sentence which followed.

Verdict against Sacheverell.

When the discussion arose whether a question should be put separately on each of the four articles of the impeachment, Lord Somers strongly supported the proposal which was adopted, that the only question should be, "Is Henry Sacheverell, Doctor in Divinity, guilty of high crimes and misdemeanours charged on him by impeachment of the House of Commons?" By his official rank he was the last but three who voted, and the Lord President, with a firm voice, answered, "Guilty." The numbers were pretty much as in any other party division, sixty-nine to fifty-two. However ill advised the prosecution, I must say, that the defendant in preaching and publishing such a sermon, committed an offence for which he was liable to punishment. For the desecration of the pulpit by making it a platform from which he assailed political opponents, he was to answer to his ecclesiastical superiors; and several parts of his harangue, charged as libellous, did not exceed the just bounds of political discussion; but in others he had publicly denied the lawfulness of the existing government, and incited the people to a violent subversion of the settlement for the succession to the throne established by the legislature.

Downfall of the Whigs.

But, as Somers had foreseen, the Lord Chancellor in declaring what was the sentence on Dr. Sacheverell, pronounced the doom of the Whigs. The Queen had been present during all the proceedings, and recollecting that she was the daughter of the last legitimate King, but forgetting that she

had a brother who, according to the doctrine of divine right, had a preferable title to the throne, she had been much startled and shocked by the doctrines which Sir Joseph Jekyll and the managers for the Commons had propounded as to the right of resistance; and she had listened with much more complacency to Sir Simon Harcourt and the counsel for the defendant, when they showed that passive obedience was enjoined both by law and religion. The effect upon the public was such, that all moderate friends of the Church, and all dissenters seemed annihilated, or become ashamed of their opinions,—and an ultra High-Church enthusiasm raged unresisted throughout the land. Sacheverell himself was considered a greater hero than Marlborough, and dissenting chapels being burnt as a sacrifice to him, he was received wherever he appeared with more than royal honours. If any of the Whig cabinet had been so silly as to think that the impeachment would amuse the public, and allow them without opposition to prosecute their foreign policy, they were miserably deceived, for all the victories they had won abroad were forgotten in the danger that was apprehended to the Church at home; and although the majorities in both Houses remained steady, there was a general desire in the nation that its destinies should be confided to more orthodox and safer councillors. Harley marked with delight the advantage to be gained, and both during and after the trial unscrupulously patronised Sacheverell and his doctrines. His secret communications with the Queen became more frequent, and she only waited for a favourable opportunity to change the administration and to dissolve the parliament.

May, June, 1710. Imprudent rejection of offers of France at Gertruydenberg.

The last act of the Whigs was to reject the overtures made by Louis XIV. at Gertruydenberg, upon which it is now generally thought that peace might have been advantageously concluded. Somers, bent on gaining the specific object of the GRAND ALLIANCE,—to prevent France and Spain from belonging to the same family, shut his eyes to the reduced condition of the former kingdom, and the devoted attachment of the latter to a Bourbon sovereign; and although all danger to the balance of power in Europe had passed away, he still cordially supported the Duke of

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Marlborough in his wish to penetrate the last line of the French defences on the side of Flanders, and to march upon Paris. He thus wrote to his friend the Lord Lieutenant of

July 15. 1710.

Ireland: "The French ambassadors at Gertruydenberg have sent a very insolent letter, or rather manifesto to the Pensioner in order to justify their breaking off the negotiation. I hope so unnecessary and so insolent a provocation will give the Dutch courage enough to resent it as they ought; but I have not the resolution taken upon it. It breaks my heart to think what a noble game we are unnecessarily throwing away."

From the odium into which the Whigs had brought themselves by their supposed persecution of the Church, the charge was generally believed that Marlborough's only motive for continuing the war was, that he might retain the command of the army abroad, with the immense emoluments which it brought him; and that all the members of the party were willing to sacrifice religion and the public prosperity for their own individual aggrandisement.

A.D. 1710. Petitions for peace.

The Tory movement began by getting up petitions to the Queen from the counties and some large cities, complaining of the proceedings of the present House of Commons, accusing ministers of wasting the public resources, and asserting that the Church was in danger. The Whigs attempted counter petitions, but durst not call public meetings for the purpose, and they could obtain comparatively few signatures.* The Queen took courage to make some partial changes at Court, and to appoint to situations in her personal gift individuals who had been active in the Sacheverell riots. Rumours were spread of a dissolution of parliament, which called forth the following letter from Lord Somers to Lord Wharton: —

* About this time Swift arrived from Ireland on his mission about the "First Fruits," and saw the coming change. However, he condescended to take notice of a falling patron: "Paid my first visit to Lord President, with whom I had much discourse, but put him always off when he began of Lord Wharton in relation to me, till he urged it; then I said he knew I never expected any thing from Lord Wharton, and that Lord Wharton knew that I understood it so. He said that he had written twice to Lord Wharton about me, who, both times, said nothing at all to that part of his letter. Lord President told me he expected every day to be out, and has done so these two months." — *Journal to Stella*, 12th Febr. 1710.

"We are not without hopes of a good parliament in case they will put us upon a new election. I cannot find a way to preserve credit, or to furnish the necessary sums for the army, unless the present parliament be continued. There is no certainty what the composition of the new parliament will be, nor what will be the turn they will take, since they are not Whigs only who will be affected by the dissolution."

A.D. 1710. Dismissal of Lord Somers and the Whigs.

At last, in the end of September*, when the Queen was in council, with the Lord Chancellor on her right hand, and Lord Somers on her left, a scene took place which bears no resemblance to the manner in which such changes are announced in our days. Her Majesty being seated in her chair of state at the head of the Board, after some routine business had been gone through, called upon Sir Simon Harcourt, the Attorney General, to produce a proclamation which she had ordered him to prepare for dissolving the parliament. When it had been read, the Lord Chancellor rose up to address her with the intention of dissuading her from such a step, meaning to urge that, as the parliament had only sat two years, and as it had strenuously supported her Majesty in carrying on the war, its sudden dissolution would cause great dismay to her allies and joy to her enemies. But he had proceeded a very little way when the Queen stopped him, saying, "that she had considered the matter well, that she would admit of no debate, and that the writs for a new parliament must immediately issue." She then signed the proclamation. Next she declared her uncle, the Earl of Rochester, President of the Council in the room of the Lord Somers. A similar transfer was made of almost all the great offices of state. "So sudden and so entire a change of the ministry," says Burnet, "is scarce to be found in our history. The Queen was much delighted with all these changes, and seemed to think she was freed from the chains the old ministry had held her in: she spoke of it to several persons as a captivity she had been long under." † The Bishop's splenetic account of

* Burnet states this scene to have taken place in October, but the *London Gazette*, and other documents showing the new appointments, prove him to have been mistaken. — O. T. iv. 299.

† O. T. iv. 300.

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the elections shows that the Queen had the nation completely on her side: "Unheard of methods were used to secure them in London, and in all parts of England; but more particularly in the great cities there was a vast concourse of rude multitudes brought together, who behaved themselves in so boisterous a manner that it was not safe, and in many places impossible, for those who had a right to vote to come and give their votes for a Whig." The result was a House of Commons still more Toryish than that which passed the bills against occasional conformity.*

Nov. 14. 1710. Letter of Lord Somers to ingratiate the Whigs with the Court of Hanover.

While the Whigs were in this prostrate condition, an attempt was made by the Tories to ruin all their future prospects, by representing them at the Court of Hanover as republicans and levellers, and openly denouncing the sentiments expressed by them at the late trial as inconsistent with monarchical or hereditary government. Lord Somers thereupon wrote the following letter to the Hanoverian resident:— "My Lord Halifax and my Lord Sunderland beg of you, Sir, to explain to your Court that the Whigs are by no means for a republic, nor for rendering the Crown elective, as they consider it hereditary in the protestant line, and belonging to the nearest in that line. But it is not possible for the Whigs to abandon the Revolution. They advanced the late King to the throne, and they are obliged to defend his title now. They advanced him then in preference to the Queen who now reigns, although she was nearer and a protestant. As this could not be done but by the authority of parliament, it is natural for the Whigs to defend that authority, and the parliamentary right to the Crown, for otherwise they would declare themselves traitors and rebels; and as the establishment of the Hanoverian succession is a consequence of the

* There is a curious note, by Speaker Onslow, in Burnet's "History of his own Times," in which he relates some negotiations that were carried on with Harley by Lord Somers, Lord Halifax, and Lord Cowper, a short time before this change of ministers, on the basis of an overture made by Harley for keeping them in place if they would consent to the substitution of himself, and some of his friends, for Lord Treasurer Godolphin and his dependents. Onslow says, that he had his information from Sir Joseph Jekyll, "who," he adds, "had it very likely, and I think he said so too, from the Lord Somers, to whom he was brother-in-law." The negotiation was broken off in consequence of the opposition of Lord Wharton, who expressed his detestation of having any thing to do with Harley.

Revolution, and a work of the late King, your Court should take it well of the Whigs that they defend the Revolution, and should excuse some expressions in their last writings, which appear to carry too far the authority of the parliament in the affairs of the succession; and the more so that the maxims of the Tories, tending directly to prepare the way for the Prince of Wales, and to secure his title from being called in question, it is natural for the friends of the Hanoverian succession to maintain a contrary doctrine." *

Lord Somers in opposition.

Lord Somers now went into active, and, I am sorry to say, in some instances, factious opposition. He might well be excused in still standing up for a vigorous prosecution of the war, and in trying to obtain a condemnation of the peace which was concluded; but we can hardly attempt to palliate his combining to undo the great measure of internal policy which illustrates this reign, and which he had himself been so instrumental in accomplishing.

Virulence of party writers in the reign of Queen Anne.

As soon as he was removed from office, —notwithstanding his services and his character, as he was considered the chief councillor of the Whigs, he was relentlessly assailed in parliament, and libelled by the Tory press in a manner to make public men of the present day rejoice that they did not live in the reign of Queen Anne. Complaints are still made, and sometimes with justice, of the licentiousness of our periodical writers; but modern *libellers* are mild, candid, and cautious, compared with the *wits* of the Augustan age of English literature when engaged in political controversy. Private character, which is now almost invariably respected, was then attacked with unfeeling exaggerations of what was true, and with unmixed inventions of malignant falsehood. I shall give one specimen which may be enough to support my charge: Swift was highly indignant that he had not obtained promotion in the church from the late government. Somers and Montague had been eager to befriend him, and if he had been a layman they certainly would have liberally provided for him as they did for Addison and Congreve; but being in orders, he could not well do the duties of Under Secretary of State, or Com-

* Macph. State Papers, ii. 202.

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missioner of Customs, and Queen Anne had resolved that the author of the Tale of a Tub should not hold any high ecclesiastical dignity in England. They proposed to appoint him Secretary of Legation at Vienna, or Bishop of Virginia; but he spurned at such offers, his determination being to enjoy power and preferment at home.* When the tide was turning during the trial of Sacheverell, he formed an alliance with Harley and St. John, and now the chief prop of their government, and editor of the "Examiner," he vituperated the leaders of the opposition with bitterness, in proportion to the fulsomeness of the flattery he had formerly lavished upon them. In an early Number of that Journal he compares the late and the present ministers by pairs; — and this is his parallel between the patron, to whom he had dedicated the Tale of a Tub, and his successor: "The person who now presides at the council is descended from a great and honourable father, *not from the dregs of the people;* he was at the head of the Treasury some years, and rather chose to enrich his Prince than himself. In the height of favour and credit, he sacrificed the greatest employment in the kingdom to his conscience and honour. He hath been always firm in his loyalty and religion, zealous for supporting the prerogative of the crown, and preserving the liberties of the people. But then his best friends must own that he is neither *Deist* nor *Socinian;* he hath never conversed with TOLAND to open and enlarge his thoughts; nor was he ever able to arrive at that perfection of gallantry *to ruin and imprison the husband in order to keep the wife without disturbance.*" †

Attack upon Lord Somers by Swift.

* It is said, that when the Earl of Wharton was appointed Lord Lieutenant of Ireland, Somers introduced Swift to him as a fit person to be his chaplain, when the profligate Peer exclaimed, "We cannot afford to countenance such fellows; we ourselves have no character to spare." This may account for the savage ferocity with which he afterwards attacked Wharton. The hatred he bore the Ex-Lord Lieutenant, and his old friends, he was at no pains to conceal:

"In state opinions *à la mode*,
He hated Wharton like a toad,
Had given the faction many a wound,
And libell'd all the Junto round."

† Examiner, No. 26. Feb. 1. 1711. So delighted were the Tories with this lampoon, that Lord Oxford, as a reward, offered Swift 50*l.*, which he indignantly refused, expecting now that mitre which he could not obtain from the Whigs.—

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Jan. 11. 1711. Part taken by Lord Somers respecting the war in Spain.

In the beginning of this year, an inquiry being instituted in the House of Lords into the manner in which the war had been conducted in Spain, Lord Somers strenuously supported petitions presented by the Earl of Galloway and Lord Tyrawly, that they might be heard against certain charges brought forward against them; but he had, on this occasion, the mortification to find himself in a minority in that assembly which he had long ruled: a motion for rejecting the petitions being carried by a majority of fifty-seven to forty-six.* In a general debate upon the conduct of the war in Spain, which took place a few days after, he seems to have taken a comprehensive view of the foreign policy of

*Journal to Stella.* It is amusing to find Swift's indiscriminate admirers standing up for his political consistency; whereas, there is not such a flagrant instance of *ratting* in the annals of English party politics as he exhibits. He easily reconciled his high churchism to whiggery while the Whigs were in power, and he openly professed himself an adherent to that party. Thus he addresses the Honourable Mrs. Finch, afterwards Lady Winchelsea:

"And last my vengeance to complete,
May you descend to take renown;
Prevail'd on by the thing you hate,
A Whig, and one that wears a gown."

Again, referring to the time when Somers was Chancellor, he says, "It was then I began to trouble myself with the differences between the principles of Whig and Tory. I talked often on this subject with Lord Somers; I told him that, having been long conversant with the Greek and Latin authors, and, therefore, a lover of liberty, I found myself much inclined to be what they call a Whig in politics; and that, besides, I thought it impossible upon any other principles to defend or submit to the Revolution." In his Journal to Stella, and in letters to his other correspondents, when he had gone over, and was "giving it to the scoundrel Whigs all round," he repeatedly attempts to justify himself by the personal ill-usage he had experienced in receiving no promotion from them while they were in power. Even when he came to England in the autumn of 1710, and he pretends that the Whigs were trying to get him back to their party, he betrays the same feeling: "All the Whigs were ravished to see me, and would have laid hold on me as a twig to save them from sinking; and the great men were all making their clumsy apologies. It is good to see what a lamentable confession the Whigs all make of my ill-usage."—*Journ. to Stel.* Yet none of them had ever insulted him, by offering him a Bank note for calumniating his private friends. Although he was so much caressed by the Tory ministers, they seem to have talked very slightingly of their tool. Lord Chesterfield, in commenting on Swift's "History of the Four last Years of Queen Anne," says, "It is a party pamphlet, founded on the lie of the day, which, as Lord Bolingbroke, who had read it often, assured me, was coined and delivered out to him to write Examiners and other political papers upon."—*Lord Chesterfield's Works*, ii. 498.

* 6 Parl. Hist. 962. 965.

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the late government, and to have strenuously maintained the necessity and practicability of driving Philip beyond the Pyrenees, notwithstanding the unfortunate battle of Almanza.*

Conduct of Swift on rumour that Whigs were coming in.

When the Tories had been in office a twelvemonth, they were supposed to be going on very indifferently, and a rumour was spread that the Queen was about to recall the Whigs, and to give the Treasurer's staff to Lord Somers. Even Swift gave credit to this, and it alarmed him so much that he earnestly applied to be sent out of the country as secretary to an embassy, that he might be safe from the returning triumph of the party which he had deserted.† But the negotiations for peace were opened, and the nation grew more and more sick of the war and the "Grand Alliance."

To our great mortification, there is not to be found any fragment of Lord Somers's subsequent speeches during the negotiations for peace, or upon the treaty of Utrecht, although we see from the Lords' Journals that he continued diligently to attend in his place‡; and contemporary writers tell us in general terms that he strongly concurred with his party in their censure of the present government for abandoning the great object of the war — the separation of France and Spain — and conceding every thing to Louis XIV., when that haughty monarch had been reduced to a situation in which he might have been compelled to accept any terms to be dictated to him by England and her allies.

Lord Somers disabled by ill-health.

The health of Lord Somers had been long failing, and from this time he could pay little attention to public busi-

* 6 Parl. Hist. 980.

† Journal to Stella, Dec. 9. 1711.

‡ At this time, parties were so equally balanced in the Lords, that the most tremendous exertions were made on both sides to procure proxies and the attendance of members. On Lord Nottingham's motion, "that no peace could be safe unless Spain and the West Indies were taken from the House of Bourbon," the previous question being put was lost by one vote, and the main question was carried by a majority of three. This led to the making of twelve peers in one day, who gave a majority to the Court. — 4 Burnet, 342. 349.; 6 Parl. Hist. 1059.

There were now heavy lamentations over the degeneracy of the Lords, in seldom sitting till near twelve at noon instead of eight in the morning. Burnet complains, likewise, that, "except on a day on which some great points are to

ness.* Periodical visits to Tunbridge Wells had hitherto been of service to him; but nothing could henceforth recruit his exhausted constitution. He became paralytic, and his mind was debilitated.

A.D. 1713. Lord Somers "a repealer."

This is the only apology that can be suggested for the part he took in the last parliamentary proceeding during this reign in which he seems to have interfered. On account of the extension of the Malt-tax to Scotland, and other supposed grievances, a cry was got up in that country for "a repeal of the Union," and the venerable nobleman who had acquired such credit by bringing about that measure, to ensure the Protestant succession, and the tranquillity and prosperity of the Island,—now, for the purpose of embarrassing the government, himself became "a repealer." On account of his indisposition, a meeting was held at his house, which was attended by the discontented Scots; and, after a long deliberation, he strongly urged that a motion should be made on the subject in the House of Lords, where his influence was still so great. Accordingly, by his advice, the Earl of Findlater moved "that leave be given to bring in a bill for dissolving the Union; for restoring each kingdom to its power, rights, and privileges; for effectually securing her Majesty in her royal power and authority over both kingdoms; and for asserting and confirming all her royal prerogatives, and effectually securing the succession in the Protestant line in the illustrious House of Hanover, as the same stands limited and secured." The motion was seconded by the Earl of Mar.† Although Lord Somers was

June 1. 1713. Motion for repeal nearly carried in the House of Lords.

be discussed upon which the parties divide, they grew disposed to rise after two or three hours' sitting." He would have had them sit from eight till two.—O. T., iv. 447.

* He appears to have had a particularly severe attack of illness in July, 1712. In a letter then written by an adherent of the abdicated family, there is the following disguised passage: "All friends here are well except Rowley (Lord Rivers), who is dying; and poor Sanders (Somers), who cannot live long, and is already dead in effect, to the great grief of Harry (Hanover), who depends more on him than on any one friend besides."—Macph. State Papers, ii. 332.

† This appears, then, to have been the course of proceeding in the Lords as it still is in the Commons; but by the usage now established in the Lords, any Peer may, without asking leave, lay a bill on the table, and move that it be read a first time, and no motion requires to be seconded. A bill is invariably read a

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present, he did not take any part in the debate; but I am concerned to say that the Duke of Argyle spoke warmly in support of the motion, and allowing that he had a great hand in making the Union, declared his opinion now to be that for the interest both of England and Scotland, it ought to be dissolved. Lord Sunderland, Lord Halifax, and all the Whigs, took the same side. Lord Oxford, Lord Peterborough, and the Tory Lords who had opposed the measure, now resisted its repeal, "on the ground that such a contract was like marriage, and how imprudent soever it might have been, was for ever binding on both parties." "All contracts," said they, "can only be dissolved by the same authority by which they were entered into; but this contract was entered into by the separate legislatures of two independent kingdoms, and cannot be dissolved by the single legislature of one kingdom."* The government did not venture to meet the motion with a direct negative, but proposed the previous question, upon which they were beaten. A division then taking place on the main question,—of the peers present there was an equal number on both sides—54 to 54—but proxies being called, there were only 13 for the motion, and there were 17 against it—so the Union stood by a majority of 4.†

first time as a matter of courtesy, but a motion is made on the first reading; and if from the title of the bill, or the explanation given of its contents, it were thought unfit for discussion, it might be stopped *in limine*.

* I wish that this reasoning would convince Mr. O'Connell and the Irish repealers. I rejoice that, for better reasons, British Whigs and Tories are of one mind as to maintaining the Union with Ireland.

† 6 Parl. Hist. 1214—1220.; Lords' Journ.; Speaker Onslow's note on Burnet. Erasmus Lewis, then M.P. for Lestwithiel, gives a curious account of this division in a letter to Swift. He says, that both the Tory peers who voted with the Lord Treasurer against the dissolution of the Union, and those who voted for it, were "under agonies" lest they themselves should be victorious. "In all the time I have been conversant in business, I never before observed both sides at the same time acting parts which they thought contrary to their interests." But the most curious document connected with this motion, is Bolingbroke's letter to the Duke of Shrewsbury, when notice had been given of it: "Your Grace will wonder when I tell you that they intend to move in our House, on Monday, to dissolve the Union. You may be sure that all those whose spirits are naturally turbulent and restless—all those who have languished under expectation—and all those who have any personal resentment, take this occasion to add to the cry, and to pursue their own views by intermingling them in this cause. We shall, I believe, ground on this motion a bill to make it *high treason*, by any overt act, to attempt the dissolution of the

Lord Somers appears afterwards to have been almost entirely disabled from attending to public affairs till the very conclusion of this reign. Though most remorselessly assailed by his old friend Swift, men of principle were more eager than ever to show respect to him. At Tory dinners his health, if proposed by a stray Whig, went round.* And the "SPECTATOR," now delighting and improving the age, when the papers were republished, the first volume was inscribed, "TO JOHN LORD SOMERS, BARON OF EVESHAM:" the dedication being from the pen of Addison. Like the *Eloge* of him in the FREEHOLDER, it is rather too lengthy and laboured, and deals too much in general praise, but some passages of it felicitously hit off the characteristic virtues he was now displaying in retirement: "It is in vain that you have endeavoured to conceal your share of the merit in the many national services which you have effected. Your Lordship appears as great in your private life, as in the most important offices which you have borne. I would rather choose to speak of the pleasure you afford all who are admitted into your conversation, of your elegant taste in all polite arts of learning, of your great humanity and complacency of manners, and of the surprising influence which is peculiar to you, in making every one who converses with your Lordship prefer you to himself, without thinking the more meanly of his own talents."†

Dedication of the Spectator to Lord Somers.

Sir Richard Steele likewise now showed a generous attachment to Somers, when no farther favour could be ex-

Kindness of Steele to Lord Somers.

Union. If, after all this, we go on to show them all reasonable indulgence, and at the same time to show to them, and to all mankind, a firmness of resolution and a steadiness of conduct, good will have come out of evil, and we shall reap some benefit from this *contretemps*."—*Bol. Corr.*, ii. 409. A serious difficulty in the way of the proposed enactment is, that the agitation would be carried on under the form of petitioning to repeal the act creating this new treason,—unless the act were to contain a clause, that to propose the repeal of any of its provisions should be high treason!

* "Addison and I, and some others, dined with Lord Bolingbroke, and sate with him till twelve. We were very civil, but yet when we grew warm, we talked in a friendly way of party. Addison raised his objections, and Lord Bolingbroke answered them with great complaisance. Addison began Lord Somers's health, which went about."—*Journal to Stella*, April 3. 1713.

† These dedications are rather stiff, except that of the eighth volume to Will Honeycombe, which is in Addison's happiest manner.

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Sept. 17. 1712.

pected from him, and as an excuse for being absent from home in attending on him, thus gallantly wrote to Lady Steele: "Dearest wife, the finest woman in nature should not detain me an hour from you: but you must sometimes suffer the rivalship of the wisest men."*

Lord Somers, though no longer attending the House of Lords, was constantly consulted by the Hanoverian minister respecting the means of securing the quiet succession of the Princess Sophia, and afterwards of her son; and, in conjunction with Lord Sunderland, Lord Cowper, and Lord Chief Justice Parker, gave minute instructions as to all the steps to be taken on the expected demise of the crown. — But his disease so gained ground, that he was seldom seen except by his private friends.

Last illness of Queen Anne.

In the distractions which preceded the dissolution of Queen Anne, he was again publicly produced upon the scene. The Earl of Oxford having been dismissed, and the intrigues of Bolingbroke being defeated by the Dukes of Somerset and Argyle bursting into the council at Kensington and procuring the delivery of the Treasurer's staff to the Duke of Shrewsbury from the dying Queen, it was agreed, with the view of securing the succession of the Hanoverian line, that all Privy Councillors, without distinction, should attend. As soon as this resolution was notified to Lord Somers, he repaired to Kensington, and next day, on the report of the Queen's physicians that her recovery was hopeless, concurred in the order by the Council to the Heralds-at-arms, and to a troop of Life Guards, to be in readiness to proclaim the Elector of Brunswick King of Great Britain, and in sending off Mr. Craggs with a letter from them to his Highness, requesting him to repair with speed to Holland, where a British squadron, that was fitting out with all possible expedition, would attend him and bring him over to

Her death.

take possession of the vacant throne. Between seven and eight o'clock in the morning of Sunday, the 1st of August, 1714, Queen Anne expired.

* Steele's Corr., 246.

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A meeting of the Lords Justices appointed under the Regency Act was immediately held. On account of Lord Somers's very infirm state of health, he had not been appointed one of them, but he attended as a Privy Councillor, and took the oath of allegiance to the new Sovereign.

New reign.

On the arrival of George I. in England, the Whigs shared among themselves all the offices of the government, and Lord Somers having contributed so much to this consummation, had his faculties been entire as in the reign of William, he would have been pressed to resume the Great Seal. But he was no longer able even to go through the light duties of President of the Council. During occasional renewals of mental activity he could enjoy the complete triumph of the policy he had supported, and he was delighted by seeing a parliamentary settlement of the crown substituted for indefeasible right. He declined any office, but, *honoris causâ*, he was not only sworn of the Privy Council, but a seat in the Cabinet was assigned to him, along with Marlborough, Sunderland, Halifax, Townshend, Cowper, and Stanhope. He promised to attend their meetings as often as his strength would permit, and to assist them with his advice when privately consulted by them. At the same time, as a mark of public gratitude, an additional pension of 2000*l.* a-year was settled upon him for life.

Arrangement for Lord Somers under George I.

Unfortunately, his infirmities still increased*, and, from his

* The following statement from the Council Office shows the Councils which Lord Somers attended, and from which he was absent, from the accession of George I. till his death: —

Aug. 1. 1714. Lord Somers was present at the first Council of George I.
Sept. 29. 1714. Sworn.

| *Councils.* | *Lord Somers.* | *Councils.* | *Lord Somers.* |
|---|---|---|---|
| 1714. Oct. 1. - | - Present. | 1715. Jan. 5. - | - Present. |
| Oct. 4. - | - Ditto. | Jan. 11. | - Not present. |
| Oct. 5. - | - Not present. | Jan. 15. | - Ditto. |
| Oct. 12. | - Ditto. | Jan. 26. | - Present. |
| Oct. 14. | - Ditto. | Feb. 7. - | - Ditto. |
| Oct. 29. | - Present. | Feb. 23. | - Not present. |
| Nov. 2. - | - Ditto. | March 29. | . Present. |
| Nov. 16. | - Not present. | April 1. | - Ditto. |
| Nov. 22. | - Ditto. | April 30. | - Not present. |
| Dec. 6. - | - Present. | June 5. - | - Ditto. |
| Dec. 16. | - Not present. | June 17. | - Ditto. |
| Dec. 30. | - Present. | June 30. | - Present. |

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paralytic affection, he became so torpid and lethargic as to be entirely unfit for public business.

Lord Somers's mind revives when consulted on the Septennial Bill.

Yet there was a brilliant gleam from this luminary before it set for ever. While the Septennial bill was pending in the House of Peers, Lord Somers had a sharp attack of the gout, which suspended the disease of his nerves. Doctor Friend, the celebrated physician, who attended him, finding his intellect, for the time, entirely restored, conveyed the news to Lord Townshend, one of the principal authors of the measure. This distinguished statesman immediately ran to consult a colleague whose loss had been so much deplored, and who, bound down by sickness and infirmity, was still mysteriously regarded as the oracle of his party. As soon as he entered the room, Lord Somers embraced him, and said, "I have just heard of the work in which you are engaged, and congratulate you upon it; I never approved the Triennial bill, and always considered it the reverse of what it was intended to be. You have my hearty approbation in this business, and I think it will be the greatest support possible to the liberty of the country." * Such was certainly stated to have been "the response of the Oracle," and it must have made a deep impression upon the public mind. I entertain no doubt that Lord Somers did approve of the bill, but I suspect that, if his faculties were restored, he rather excused it, as a necessary *coup d'état* to keep the new family on the throne, than praised as constitutional the vote of a House of Commons to prolong their power more than double the period for which they had been elected.

April 10. 1716.

| | | | | | |
|---|---|---|---|---|---|
| 1715. | July 20. | - Not present. | 1715. | Oct. 26. | - Present. |
| | July 25. | - Present. | | Nov. 8. - | - Ditto. |
| | July 29. | - Not present. | | Nov. 22. | - Not present. |
| | Aug. 31. | - Present. | | Nov. 29. | - Present. |
| | Sept. 9. | - Ditto. | | Dec. 13. | - Ditto. |
| | Sept. 15. | - Ditto. | 1716. | Jan. 6. - | - Not present. |
| | Sept. 16. | - Ditto. | | March 10. | - Ditto. |
| | Sept. 23. | - Ditto. | | April 6. | - Ditto. |
| | Oct. 18. | - Not present. | | | |

1716. April 26. Lord Somers died. The last time of his attendance in the House of Lords was 27th January, 1715. Till then he had attended pretty regularly, but he was often hardly conscious of what was going on; and he must have been a melancholy spectacle to his friends.

* Cox's *Life of Sir Robert Walpole*, i. 130.

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When the gout left him he fell back into his former state of nervousness. A fit of apoplexy happily supervened, for he could only have continued "a driveller and a show." He expired at his villa, in Hertfordshire, on the 26th of April, 1716, the very day that the Septennial act passed. His death.

He was buried in the parish church of North Mymms, where a plain monument was erected to him by his surviving sister, who, knowing and conforming to the modesty of his nature, merely inscribed upon it these simple words:— His burial.

His epitaph.

"THE RT. HONBLE. JOHN LORD SOMERS,
BARON OF EVESHAM,
LORD HIGH CHANCELLOR OF ENGLAND IN THE REIGN OF KING WILLIAM III.
To whose Memory this Monument was erected by Dame Elizabeth Jekyll."

She remembered that, at the sight of his name, every one visiting the hallowed shrine would think of the accomplished scholar, the consummate judge, the distinguished orator, the enlightened patriot, the statesman to whom we owe the expulsion of a tyrant, the Bill of Rights, and the settlement of the Protestant succession.

His character.

The observations which I have incidentally made in relating the events of the life of Lord Somers obviate the necessity of my attempting any laboured analysis of his character. I feel proud of him for having joined a profound and scientific knowledge of jurisprudence, with a love of literature, and of the fine arts — in England a rare combination. He appears to have been complete master of his own profession — from the technical rules of practice and pleading, to the most important questions of international law, — while at the Kit-Cat, at Will's, or at Button's, he could converse on equal terms with Addison, Steele, Swift, Prior, and Congreve.

His letter to Magalotti in praise of Filicaja.

He likewise carried on a correspondence with the most distinguished men of letters in foreign countries. Of this we have a very striking proof in the "Life of Vincenzio da Filicaja," by Bonaventuri, who says, "Il Conte Lorenzo Magalotti, Cavaliere di quel merito, e di quella virtù, che è ben noto a tutto il mondo, e che era strettissimo amico del Senatore da Filicaja, mi ha cortesemente comunicato una lettera, che egli

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ha avuto di Londra da Mylord Giovanni Sommers, Barone d' Evesham, Presidente del Consiglio Privato della Regina della Gran Bretagna, Signore arrichito di così maravigliose qualità personali, e adornato di cognizioni, e di virtù così distinte, che lasciando ora da parte gli altri grandissimi impieghi, che egli ha sostenuto in quel fioritissimo regno, dal solo avervi esercitato per sette anni la importantissima carica di Gran Cancelliere, in gran copia si spande, e che lo rende conosciuto e venerato da tutto il mondo. Questa lettera parla del Senatore da Filicaja in tal guisa, e ne fa un ritratto così vivo e somigliante, che io riputerei di far troppo grave torto alla memoria d' un uomo, che io venero al più alto segno, se io non la trascrivessi in quella forma appunto, che dal Conte Magalotti m' è stata data, per autenticare con una così chiara testimonianza quanto fin ora ho narrato. '*Ella è certo proprissima* (parla della lingua Inglese, nella quale è scritta la lettera) *per compiangere in essa la perdita dell' incomparabile Senatore da Filicaja, che ha si altamente lodati diversi della nostra nazione, e più distintamente ha dato a me quell' unico ragionevole fondamento che io poteva avere, per lusingarmi, che la mia memoria sia per vivere, in quell' immortale componimento de' suoi versi. Io ho così ben ponderate le sue Poesie, e v' ho letto così a fondo i veri sentimenti del suo cuore, che io mi trovo in istato di pianger la sua perdita come se io l' avessi trattato, e intimamente, ogni giorno: perchè non solamente vi raffiguro un sapere profondo, un ingegno dove si perde la vista, una gran sublimità di pensieri, e una somma sodezza di giudizio, ma vi discerno chiaramente la rettitudine, e l' integrità della sua mente, l' uomo dabbene e il perfetto amico.*' Meritò certamente il Senatore da Filicaja tutte le lodi, che gli furono date così avanti, come dopo la sua morte, poichè egli fu un gran letterato, un ottimo cittadino, ed un perfetto Cristiano." *

Translation of passage from Bonaventuri.

* "Count Lorenzo Magalotti, who is a gentleman of such merit and virtue, that he is well known to the public, and who was a very intimate friend of the Senator Filicaja, has politely communicated to me a letter which he received from John Lord Somers, Baron of Evesham, President of the Privy Council of the Queen of Great Britain, a nobleman enriched with such high personal

Filicaja never published any Italian verses in praise of the English Chancellor, but in his Works there is to be found a Latin ode, "In illustriss. Dominum D. Sommers," from which I extract a few stanzas: After an invocation to the Muses he thus proceeds: —

Filicaja's Latin Ode in praise of Lord Somers.

"Mathesin illa huic; hæc Sophiam ingerit
Suadem, Poesinque altera; et altera
Legum recludit nunc recentum
Serinia nunc veterum; urbium illa

"Artem regendarum, altaque munia
Et pacis et belli, hæc reservare amat
Arcana regnantum sagax, quæ
Zelotypæ tegit umbra curæ

* * * *

"Te haud finxit unum (credite posteri)
Natura, non mens una tibi, neque
Lingua una; septeno disertus
Ore, aliusque et idem.

"Semper, nec unquam dissitus Anglico
A sole, septem ferme idiomatum
Per ostia intras, Nili ad instar
Immodicæ maria alta famæ." *

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qualities, and adorned with such accomplishments, that after passing through other employments in that flourishing kingdom, he filled for seven years the most important office of Lord Chancellor, in which he so much distinguished himself that his name became known and venerated over the whole world. This letter speaks of the Senator Filicaja in such a way, and draws such a lively and striking picture of him, that I should be doing too great an injustice to the memory of a man whom I so much revere if I were not to present it to the reader exactly as it comes to me from Count Magalotti, and so confirm my own observations by a noble testimony, to which all must defer. 'It certainly will be fitly employed (speaking of the English language, in which the letter is written) to lament the loss of the incomparable Senator da Filicaja, who has so highly extolled several of our nation, and, in particular, has given to myself the only reasonable foundation I can have for hoping that my name will be long preserved by introducing it into his immortal verses. I have so treasured up his poetry in my mind, and made myself so familiar with the genuine sentiments of his heart, that I feel myself qualified to lament his loss as if I had for years been personally intimate with him. His writings not only show profound knowledge, a lively imagination, great sublimity of thought, and an exquisite delicacy of taste, but I clearly discover in them the utmost rectitude of sentiment, the highest principles of honour, and the requisites for the most perfect friendship.' The Senator da Filicaja certainly merited all the praises bestowed upon him, as well in his lifetime as after his death, for he was a fine writer, a patriotic citizen, and a sincere Christian."

* Opere di Vincenzio da Filicaja, tom ii. 50. Venice, 1755. — Italian being one of the seven languages with which Somers was familiar without ever having been out of England, he was of course well acquainted with the writings of his contemporary Filicaja. It is more difficult to conjecture how Filicaja became aware of the merits of Somers; but this appears to have been brought about by Henry Newton, our resident at Florence, an exceedingly learned man, and personally acquainted with both of these two distinguished characters. Newton published at Lucca, in 1710, a quarto volume of his own Latin Epistles, Ora-

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Addison's exaggerated praise of Lord Somers as a fine writer.

The friendly pen of Addison represents Lord Somers as himself consummately skilled in composition. "His style in writing was chaste and pure, but at the same time full of spirit and politeness, and fit to convey the most intricate business to the understanding of the reader with the utmost clearness and perspicuity. . . I believe no author of the greatest eminence would deny Lord Somers to have been the best writer of the age in which he lived." Yet it must be acknowledged that there is no piece which we know to be his, either in verse or prose, which can be placed on a level with the classical productions of the reign of Queen Anne. The eulogist, foreseeing that such an observation might be made, laments that "this extraordinary person, out of his natural aversion to vain glory, wrote several pieces, as well as performed several actions, which he did not assume the honour of."

Lord Somers's collection of MSS. A.D. 1752.

Besides his collection of printed tracts *, he left behind him an immense mass of MSS., partly his own composition, partly others. These came into the possession of the Hardwicke family, who were allied to him by marriage, and being deposited in the chambers of the Honourable Charles Yorke, in

tions, and Poems, in which Filicaja is often celebrated. One of the Epistles, dated Florence, Sept. 1706, is thus addressed: —

"Illustrissimo Domino
D. Johanni
Sommers,
Baroni de Evesham.
Henricus de Nova Villa.— S."

I copy a short passage from it, which is curious as giving a statement of Lord Somers's position at this time, and the services he had recently done in bringing about the Union with Scotland: —

"Dein equidem incidimus in tempora tristia, Virtutibus infensa et reip. magis quam tibi adversa. Tu verò tandem de malitia hominum, deque ipsa invidia triumphasti; atque inauditum antea nostris annalibus, neque solum Reipublicæ Atheniensis, Romana ac Batava, optimis et de se optimè meritis civibus ingratæ, ipsos Inquisitores accusationis puduit. Nunc vero sine titulo magnus et potens, nec unius anni Consul, sine fascibus nostrum regis orbem, qui Scotis adjectis, coalitisque in unum gentibus, non situ quidem, sed moribus ac mutuo metu, et solito accolarum odio disjunctis (quantum vestra superant facundiæ, sapientique trophæa illa bellica quæ sola majoribus nostris nota) amplior sanè, potentior illustriorque et magnitudine et viribus quodque majus, consiliis redditur. . . . . Te lætus interim sequitur Senatus: cumque Patribus, optandum magis antea quàm sperandum, immò opus penitùs desperatum, optime convenit populo."

* These, under the title of "Lord Somers's Tracts," have been twice published; first, in 1748, in sixteen volumes 4to.; secondly, in 1809, in thirteen volumes 4to., under the superintendence of Sir Walter Scott.

Lincoln's Inn, were there nearly all destroyed by an accidental fire. Mr. Yorke collected a few of the papers saved, which he bound in a folio volume. From this a selection was given in the "Miscellaneous State Papers," published in 1778, by the second Earl of Hardwicke, who says, "the world will do that justice to the collection as not to suppose that these specimens from it, *immitis ignis reliquiæ*, will afford an adequate idea of its merits. It filled upwards of sixty volumes in quarto, and did not contain a paper from Lord Somers's pen which the most intimate friend would have wished to secrete, or the bitterest enemy could have fairly turned to his prejudice." I apprehend, however, that these were all connected with law or politics, and that they contained nothing to show that Somers could have been the author of the "Tale of a Tub."

**His patronage of men of letters.**

The next glory to that of being a classical writer is being the patron of classical writers, and this Somers enjoyed, in conjunction with Montague, to a degree not known in any preceding or succeeding age in England. With us it is a national reproach, that authorship has rather been despised and discountenanced by the great, and it has been deemed somewhat discreditable for a man to earn his bread, or to rise into celebrity, by his pen. A successful lawyer, or a parliamentary debater, may overcome all the disadvantages of obscure origin or of early poverty, but no degree of mere literary eminence leads to political promotion. In subsequent times Addison would not have risen to a post of higher distinction than that of Editor of a Journal. But although he could not open his mouth in parliament, Somers and Montague justly appreciated his inimitable powers as a writer, and being courted and caressed by them and the other leaders of the Whig party, he became chief Secretary to the Lord Lieutenant of Ireland, a Privy Councillor, and Secretary of State. The fashion which they set was adopted by Harley and the Tories. Swift was received at the table of the Lord Treasurer with as much distinction as if he had been decorated with the Garter, and Prior was employed as an ambassador to negotiate the peace of Utrecht. Lord Somers was ever eager to do homage to established literary

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reputation, and to discover rising genius. When Pope, "lisping in numbers," gave his boyish compositions to the world,

"The courtly Talbot, SOMERS, Sheffield, read." *

His oratory.

We have no adequate means of judging how far Lord Somers deserved his reputation as an orator. Although he sat in parliament from the beginning of the year 1689 till his death, a period not much short of thirty years, and during a considerable part of that time led a great party first in the Lower then in the Upper House, there is not as much of any one speech he delivered as would make half a column of a newspaper, and in the very scanty reports of parliamentary proceedings in the reigns of William and Anne, his name is rarely mentioned.

His political services.

But he has a surer claim to our admiration and our gratitude by his deeds. He first gave the model of a *constitutional*, in opposition to an *absolutist* monarchy, and this model, which has been followed in France and in several other continental states, is now generally allowed to be the form of government which gives the most influence to enlightened public opinion, and best answers the purposes for which civil government is instituted.

Persecution of the Roman Catholics.

The great blot upon his public character was the persecution of Roman Catholics in his time,—which, if he did not prompt, he fully sanctioned. Religious toleration was one great object supposed to be gained by the change of dynasty, and it might have been expected that those who brought in the "Toleration Act," and opposed the "Bill against occasional conformity," would have been eager to permit all sects of Christians to worship God according to their consciences. Yet after the Revolution the penal code against the Romanists was made far more severe and revolting than it ever had been under Elizabeth or any of the four Kings of the Stuart line. By acts passed while Lord Somers was in

* At the distance of many years, Swift, notwithstanding the hardness of his nature, retained a tender recollection of the pleasant literary reunions in the early part of Anne's reign at the houses of Pope, Somers, and Montague. Writing to Pope in 1721, he says — "I frequently conversed with Mr. Addison during all my Lord Oxford's ministry, and his friendship to me continued inviolable, *with as much kindness as when we used to meet at Lord Somers'* or Halifax's, who were leaders of the opposite party."

office, Roman Catholic priests were banished the kingdom, and if they returned they were to be hanged*; a reward of twenty pounds was given for the discovery of a priest, and a Papist refusing to tell where he last heard mass, was to be imprisoned for a twelvemonth†; no Papist was allowed to keep a school, and severe penalties were denounced against such as should go themselves or send others abroad to be educated in the Romish religion‡; no Papist could be guardian to any child, and if the child of a Papist became a Protestant the Court of Chancery might order any part of the father's estate to be applied to the use of the child§; no Papist could be a barrister or solicitor‖; no Papist was to serve on grand juries or on any other jury if objected to¶; and other penalties and disabilities were inflicted equally atrocious. It is a very small mitigation of the enormity of this persecuting policy, that it was chiefly directed against the Irish Roman Catholics, and that they were all supposed to be Jacobites. The inexpediency as well as the iniquity of such laws seems palpable to us. One fatal consequence of them was, that they not only permanently alienated the affections of the Irish Roman Catholics from the new dynasty, but made English connection odious to the Irish nation, except to a few Protestants who were encouraged to oppress, rob, and insult their countrymen.

The most curious consideration, in looking back to those times, is, that from a general feeling among English Protestants with respect to Roman Catholics,—resembling that which now prevails in the United States of America among the whites with respect to the negroes, — the authors of such measures had no consciousness themselves of doing any thing wrong, and did not at all thereby injure their character for liberality with the great body of their countrymen. We can only lament that Lord Somers was not on this subject in advance of his age. Such contemplations should make us alarmed lest some laws and practices, which seem to us very harmless, may be reprobated by our posterity.

* 9 W. 3. c. 1. † 8 Anne, c. 3. ‡ 7 W. 3. c. 4.
§ 8 Anne, c. 3. ‖ 10 W. 3. c. 12. ¶ 6 Anne, c. 1.

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Charge against Lord Somers of infidelity.

The reproach to which Lord Somers was subject in his own time was, that he was too tolerant, from which some said he was an enemy to the church, some that he was indifferent about religion, and others, that he was an atheist. He likewise incurred much obloquy by having had, at one time, a private intercourse with Toland. But there is every reason to believe that he was a sincere believer in the truths both of natural and revealed religion. Although he discouraged the extravagant pretensions of the clergy, — instead of being hostile to the Church of England, himself approving of its doctrines and discipline, and seeing that it possessed the affections of a vast majority of the people, he warmly supported it. Nay, he originally concerted with Bishop Burnet the plan of applying the "First Fruits and Tenths" to the augmentation of small livings, which was afterwards adopted under the name of QUEEN ANNE'S BOUNTY.* He did occasionally converse with the author of "Christianity not Mysterious," but there was a warm and steady friendship between him and the pious Tillotson.† "His religion," says Addison, (a moralist not only in his writings but in his practice — a Christian, who taught us how to live and how to die,) "was sincere, not ostentatious, and such as inspired him with an universal benevolence towards all his fellow-subjects, not with bitterness against any part of them. He showed his firm adherence to it, as modelled by our

* Letter from Lord Somers to Bishop Burnet: —

"My Lord, — 22d Nov. 1701.

"I acknowledge the honour of your Lordship's letter of the 17th with great thankfulness. I wish it may lie in my power to contribute to the excellent design you propose; no man will enter into it more willingly, nor shall labour in it more heartily. The point of the first fruits and tenths is what I have proposed several times with much earnestness, but without success. When I have the happiness of seeing your Lordship, we shall, I hope, discourse at large upon the whole subject. In the mean time, allow me to assure you that I am, with great and sincere respect,

"My Lord,
"Your Lordship's most obedient humble Servant,
"SOMERS."

— Life, prefixed to Burnet's *History of his Own Times*, p. lxvii.

† Toland obtained access to Somers as a joint admirer of Milton, and was a coadjutor in raising and spreading the reputation of this his favourite poet by the superb edition of "Paradise Lost," with cuts, published under his superintendence by Tonson. — *Cooksey*, 27.

national constitution, and was constant to its offices of devotion, both in public and in his family." *

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Charge of libertinism.

I hope, likewise, that his morals were unimpeachable. When Solicitor General he had paid his addresses to a young lady, to whom he seems to have been tenderly attached. This was a Miss Anne Bawdon, daughter of Sir John Bawdon, a wealthy alderman of London. When the lovers had plighted their mutual troth, and thought that a long career of domestic happiness was before them, the flinty-hearted father asked what settlement was to be made upon his daughter, corresponding to the fortune he meant to bestow upon her? A rental (rather a short one) was actually given in. Somers's patrimony was very moderate, and he had added little to it himself, having begun practice late, and having been more solicitous about reputation than money. The sordid city knight cared little for the fair character or the bright prospects of the poor Solicitor General, and, declaring the house at Whiteladies and the farm at Severn Stoke to be no provision for a widow, an eldest son, and younger children, peremptorily broke off the match, and compelled the weeping girl to accept an offer from a rich Turkey merchant;—a step he is said to have heartily repented, when, at the end of three years, he whom he had rejected for his son-in-law being made Lord Keeper of the Great Seal, Sir John Bawdon wished, like Sir Giles Overreach, that he could have seen his "Right Honourable Daughter." † After this disappointment, which he keenly felt, Somers thought no more of the marriage state, and devoted himself to his public duties and the cultivation of literature and science.

His disappointment in love.

Impartiality, however, forbids me to pass over a specific tale of scandal which was most industriously circulated respecting him.

* This groundless charge of infidelity has caused Somers to be compared, not inaptly, to the pious as well as learned Chancellor de l'Hospital, who, because he was for religious toleration, was looked upon with such horror that it was a common saying among the people, "*Dieu nous garde de la messe du Chancellier.*"

† New Way to pay Old Debts, act ii. sc. 1.

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His housekeeper.

He had for his housekeeper a Mrs. Blount, the wife of a tradesman at Worcester, and it was alleged that he lived openly with this lady as his mistress, behaving cruelly to the husband, and at last shutting him up in a madhouse. "*Quibus indiciis, quo teste probavit?*" This story, most improbable in itself, is supported only by the gratuitous assertion of bitter and unscrupulous enemies. The manners of the Court of Charles II. had passed away. William and Mary, and afterwards Anne and the Prince of Denmark, had exhibited to the world a picture of the domestic virtues; licentiousness was discouraged in the highest quarters, and the appearance of it was avoided by the most licentious. It is therefore utterly impossible that a grave magistrate like Somers, who, though firm in the discharge of his duty, always showed a solicitude to enjoy the good opinion both of the prince and the people, should have followed a course which was sure to draw down upon him the just censure of all ranks in the state; and the supposition is equally at variance with the prudence and good taste, as with the honour and religious feeling which we know belonged to him. If the case had been made doubtful by circumstances (which it is not), let me again call a witness to character who is worth a thousand — Addison, who, if he might have forgiven youthful gallantries when repented of and renounced, would have shrunk with horror from the deliberate systematic wickedness imputed to the Lord Chancellor. Yet Addison, who for many years saw him in his own house at all hours, and continued to be on the most friendly and familiar footing with him, describes him as immaculate.*

Exculpated by Addison.

* "The New Atalantis," a more infamous work than "the Memoirs of Harriette Wilson," was published early in the reign of Queen Anne, and, passing through many editions, retained its fashion for some years at least,—if not destined to immortality, — as we know from the lines of Pope in "the Rape of the Lock," —

> "While fish in streams, or birds delight in air,
> Or in a coach and six the British fair,
> *As long as* ATALANTIS *shall be read*,
> Or the small pillow grace a lady's bed."

I subjoin Mrs. Manley's character of "CICERO," by which she means to describe "Lord Chancellor Somers." "Cicero was next called, not he that saved the commonwealth from being made a monarchy, but he that would have made the monarchy a commonwealth; he was advanced by Irene to be Magister Officiorum; the God of eloquence hung upon his tongue; Minerva herself inspired

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I do not find any particular account of his habits as to convivial pleasures, in which it was still usual for statesmen

His social habits.

his brain and fired his heart. His wisdom and sedateness of temper preserved and kept together the cabal. Famous Cethegus and precipitate Catiline could only be restrained by him. He it was, that gave them their cue, when to bellow, when to strike, when to comply, but seldom to save; for, however, disagreeing in other points, they used all to come in to accord for revenge and persecution.

"And, what is not the least astonishing ingredient of their composition, these zealous reformers! these image-worshippers! these pretended devotees who ran mad after the outside of religion! were as immoral as those that had never heard of any! Cicero himself (an oracle of wisdom) was whirled about by his lusts, at the pleasure of a fantastic worn-out mistress: He prostrated his immutable sense, reason, and good nature, either to revenge or reward as her caprice directed; and what made this commerce more detestable, this mistress of his was a wife! Impious excess! Abominable adultery! Were there not enough of the frail race unmarried? Had not Sergius's immemorial assiduities corrupted enough of that order, but this patrician, this director of nations and imperial assemblies, must bring his pollutions to defile the marriage bed and corrupt a wife? Nay, which is more execrable, the wife of a friend. Was it not a good comedy, or rather farce, when you behold this sententious man, this decisive orator, who by the enchantments of his persuasion left not even Destiny to herself, for Fate and Fortune were, whenever he spoke, his slaves. To see this great, this stupendous man, that could enchant an empire by the music of his voice, skulking in the obscure habit of a slave, hiding his face in an abject robe, as if that could conceal his vices, waiting at a back-door to get undiscovered entrance into his own palace, after passing the guilty night in adultery with an infamous prostitute! And this not for once or twice, but for months and years! Till his sin was become as confirmed a habit as his hypocrisy! The poor husband, distracted with his wrongs, grew incapable of following the necessary duties of his calling, by which neglect his maintenance fell, and he drank the bitter draught of poverty. The adulteress rioting in all the luxury of the East! shifting abodes in scandalous by-corners from place to place for fear the cuckold's prerogative should seize upon the ornaments and riches of his wife as lawful spoil, which, when he was so lucky to do, the vindictive patrician interposed with a thorough revenge, first casting him into a loathsome prison, where, when he had sufficiently languished, a warrant was produced from the gaoler to deliver his prisoner to some persons, who receiving him into their custody disposed of him in such sort, that to this day he has never been heard of. Let the idolaters consider how much they ought to pride themselves in the morality, religion, and virtue of this Atlas of their empire." — *New Atalantis*, 6th edition, 1720, vol. iii. p. 200

In a preceding volume we find rather a flattering character of Lord Somers and his friend Montague Lord Halifax: —

"May your Ladyships be pleased to stretch your radiant eyes with a more than ordinary regard to those two renowned politicians that stop at the door in deep conference with each other. They have had a successful ministry. Time was when their young ambition durst not cast away an improbable wish of being masters of the tenth part of what they are now in possession of. There all they pursued was to be applauded for men of genius in the airy region of Parnassus; they both wrote, and both with success. Nor can there be better judges of writing: and, as an everlasting monument of their praise, be it recorded, that they have not been afraid to applaud and reward the performances of others; free from that emulation which has stung even some of the great emperors of old, who would be thought poets. They have, in their two persons, more conspicuously encouraged and raised the ingenious, than has the whole race of the Atalantic nobility beside. True, they have had a larger power than most, and have more distinguished it. Have they enriched themselves suddenly and sur-

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and wits to indulge too freely; but, considering what he accomplished, he must have been habitually temperate, although he might occasionally have exceeded when he had a *tête-à-tête* with Addison, or when he was in the chair leading the festivities of the Kit-Cat. Swift, in his imitation of Horace,

prisingly? 'Tis meritorious in one respect, because they do good with it to others: both have had the lucky circumstance of finding it to be for their interest still to remain of the party they first fixed in. The methods they have took to raise their fortune, gives us but little hopes that they would have persevered in any principle that should but once appear to be contrary to their interest: but since no such change has arrived, let us charitably applaud them as men remaining true to their first professions — a virtue rarely found in a statesman."—*New Atalantis*, vol. ii. 309.

Cooksey, in his abortive sketch of the Life of Lord Somers, under pretence of defending him, represents him as one of the most profligate of mankind. After referring to the representation that he was *sprung from the dregs of the people*, he thus proceeds: "The other charge is founded on a supposed amour and attachment between him and a Mrs. Blount, whose husband had been three several times set up in business by his Worcester friends; who, at length finding him a man whom it was impossible to serve or save from a jail, left him to his destiny and contented themselves with recommending his wife, a very sensible and deserving woman who had been the mother of a large family, to Lord Somers as a housekeeper; in which capacity she lived at his house at Belbar, and proved an excellent servant and nurse to him as long as he lived. His ideas as to connections with women (having been disappointed in his first attachment, on which he renounced ever after the thought of marrying), were such as he professes in the Tale of a Tub, *Jacere collectum humorem in corpora quæque.* Nor did any man ever suffer more than he did from indulging this favourite maxim, in which he was by no means nice, or in the least degree delicate. To this was owing his frequent illnesses, and calls to Tunbridge: and what was worst of all, that wretched state to which the brightest parts and intellects God ever bestowed on man were reduced before his final dissolution."—*Cooksey*, 27, 28. But there is some reason to think that this gentleman had a spite against the memory of his kinsman; at all events, composing his work at Lausanne, in the very end of the eighteenth century, he could only have spoken from vague tradition, and we must be slow to give any credit whatever to the testimony of a man who asserts as a fact, that "Lord Somers was the author of THE TALE OF A TUB."

A more startling testimony is that of Mackey, who, in his "Sketch of leading characters at the English Court," written for the information of the Princess Sophia of Hanover, after exalting the good qualities of Somers, throws in a qualification — as if unwillingly — perhaps deceived by prevailing calumny: "He gives entertainments to foreign ministers more like one always bred up in a Court than at the bar. He is of grave deportment, easy and free of conversation, *something of a libertine*, &c."

I pay less attention to the repetition of the charge by the vindictive Duchess of Marlborough: "There was one thing that appeared to be a great blemish to a Lord Chancellor, that he lived as publicly with another man's wife as if she had been his own." And I utterly disregard the libellous distich of the "downright Shippen:"

"He is — for satire does the truth declare —
Deist, republican, adulterer."[1]

[1] Dodsby's *Miscellanies*, iii. 256.

entitled "Toland's invitation to Dismal [Lord Nottingham] to dine with the Calves' Head Club," written at a time when he was at enmity with the Whigs, does not venture to say more than that the gravity of the Ex-chancellor was relaxed by the bottle: —

> "Who by disgraces or ill fortune sunk,
> Feels not his soul enliven'd when he's drunk?
> By force of wine even Scarborough is brave,
> Hall * grows more pert, *and Somers not so grave.*" †

This supposed gravity was frequently mimicked for the amusement of the Tories by Estcourt, the famous player. ‡ But to the person made the subject of such paltry jocularity might truly have been applied the description of the demeanour of Agricola: "Ubi conventus ac judicia poscerent, gravis, intentus, severus: ubi officio satisfactum, nulla ultra potestatis persona: tristitiam et arrogantiam exuerat: nec illi, quod est rarissimum, aut facilitas auctoritatem, aut severitas amorem deminuit." §

Lord Somers is celebrated for having been contented with a very small portion of sleep, and in his advanced life, when he could not conveniently rise and light his own fire, "at

* Henry Boyle.

† "Quid non ebrietas designat," &c. Ep. lib. i. 5. See *Journal to Stella*, 7th Aug. 1712.

‡ Halifax, Godolphin, and the other Whig leaders, were likewise *taken off* by Estcourt. "This man was so amazing and extraordinary a mimic, that no man or woman, from the coquette to the privy councillor, ever moved or spoke before him, but he could carry their voice, look, mien, and motion, instantly into another company. I have heard him make long harangues, and form various arguments, even in the manner of thinking of an eminent pleader at the bar, with envy, the least article and singularity of his utterance so perfectly imitated that he was the very *alter ipse*, scarce to be distinguished from the original." *Life of Cibber*, i. 86. Notwithstanding the liberties he had used with the Whigs, there is a most affectionate tribute to his memory by Steele in the 468th No. of the Spectator. "He had so exquisite a discerning of what was defective in any object before him, that in an instant he could show you the ridiculous side of what would pass for beautiful and just. In the accounts he gave of persons and sentiments, he did not only hit the figure of their faces and manner of their gestures, but he would in his narration fall into their very way of thinking, and this when he recounted passages wherein men of the best wits were concerned, as well as such wherein were represented men of the lowest rank of understanding. I do not know any satisfaction of any indifferent kind I ever tasted so much as having got over an impatience of my seeing myself in the air he could put me when I have displeased him. It is to poor Estcourt I chiefly owe that I am arrived at the happiness of thinking nothing a diminution to me but what argues a depravity of my will."

§ Tacit. Ag. c. 9.

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waking, a reader attended and entertained him with the most valuable authors." *

His kindness to his relations.

When associating with nobles and kings he retained all his early attachments, and he kept up a friendly intercourse with all connected with him by blood or affinity, never being ashamed of any of them, however obscure. Thus, having received, when he was Chancellor, the present of a collar of brawn from a Mr. Cooksey, who, as the husband of a distant relation, claimed kindred with him, at the first instant of leisure he sent him this good-natured acknowledgment: —

"Dear Cousin,

"Though I desired my brother Cocks long since to return you my best thanks for your noble present of as good a collar of brawn as ever was ate, (which I cannot doubt he has done in the best manner I could wish,) yet having feasted myself, and made my friends often welcome to it, I cannot forbear to return you personally our joint thanks, which I have often promised them to do.

"And so I remain, dear Cousin,

"Your most faithful Servant,

"SOMERS."

His generosity.

His kindness and generosity to all depending upon him will be easily credited, when it is remembered that his enemies allowed that he was indifferent about money, and that he subscribed liberally to every public undertaking which had the slightest claim to his support.†

Attacks upon him by party writers.

Sir John Macpherson.

But let us see how harmless are the bitterest attacks upon his general character. Thus writes Sir John Macpherson:

"Somers, though meanly descended, rendered himself respectable by talents which he knew well to improve to his own advantage. He was a man of abilities in his profession, but his parts were more solid than brilliant, or even clear. He was rather a good Chancellor than a great statesman. His integrity and diligence in office were with rea-

* Madd. 107.

† We have seen his munificence to his college, and his contribution to fit out Captain Kid — which was wickedly made a ground of impeachment against him; and Evelyn tells us that, in 1696, he subscribed 500*l.* to Greenwich Hospital. — Evelyn, ii. 55.

son commended. He was too diffident and too compliant with King William to make any splendid figure beyond his own line of the law. His complaisance to the King's humour, his flattering him in his very errors, his feeble manner of recommending what seemed right to his own judgment, bore more the appearance of a convenient than of an able servant. Upon the whole, he seemed more calculated to smooth the current of business by amending and softening measures already adopted, than to propose and execute those spirited and manly expedients, which times of faction seem to demand at the hands of a great minister." *

Swift. Swift, in his History of the four last years of Queen Anne, tries to depreciate, but is forced to praise him. "The Lord Somers may very deservedly be reputed the head and oracle of that party: he has raised himself, by the concurrence of many circumstances, to the greatest employments of the state, without the least support from birth or fortune: he has constantly, and with great steadiness, cultivated those principles under which he grew.... I have hardly known any man with talents more proper to acquire and preserve the favour of a Prince; never offending in word or gesture; in the highest degree courteous and complaisant; wherein he set an example to his colleagues, which they did not think fit to follow: but this extreme civility is universal and undistinguished; and in private conversation, where he observes it as inviolably as if he were in the greatest assembly, it is sometimes censured as formal. Two reasons are assigned for this behaviour: first, from the consciousness of his humble original, he keeps all familiarity at the greatest distance, which otherwise might be apt to intrude; the second, that being sensible how subject he is to violent passions, he avoids all incitements to them, by watching those he converses with, from his own example to keep a great way within the bounds of decency and respect. And it is indeed true, that no man is more apt to take fire upon the least appearance of provocation; which temper he strives to subdue with the utmost

* Macph. Hist. G. Brit. ii. 182.

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violence upon himself: so that his breast has been seen to heave, and his eyes to sparkle, with rage in those very moments when his words and the cadence of his voice were in the humblest and softest manner: perhaps that force upon his nature may cause that insatiable love of revenge which his detractors lay to his charge, who consequently reckon dissimulation among his chief perfections. Avarice he has none; and his ambition is gratified by being the uncontested head of his party. With an excellent understanding, adorned by all the polite parts of learning, he has very little taste for conversation, to which he prefers the pleasure of reading and thinking; and in the intervals of his time amuses himself with an illiterate chaplain, an humble companion, or a favourite servant." *

The Dean, afterwards, when he had sunk into misanthropy, thus speaks of Somers in a letter to Bolingbroke †, where he has been enumerating men of genius who have been unfortunate. "I remember but one exception, and that was Lord Somers, whose timorous nature, joined with the trade of a common lawyer, and the consciousness of a mean extraction, had taught him the regularity of an alderman, or a gentleman-usher."

Praise of him by the Tatler.

We must now hear his defenders, beginning with Isaac Bickerstaff, who wished Lord Somers to be prime minister: — "If I were to wish for a proper person to preside over the public councils, it should certainly be one as much admired for his universal knowledge of men and things, as for his eloquence, courage, and integrity, in the exerting of such extraordinary talents."‡

Horace Walpole, who must have heard him so often described by Sir Robert, thus among his Royal and Noble Authors

* Swift in his notes on Davis's "Characters of the Court of Queen Anne" clearly discloses his malignity. Lord Somers: of a creditable family in the city of Worcester," [*very mean; his father was a noted rogue.*] "He is supposed to have been the best Chancellor that ever sat in the chair." [*I allow him to have possessed all excellent qualifications, except virtue; he had violent passions, and hardly subdued them by his great prudence.*] Yet Swift had declared that he had nothing *to lay to his charge except formality*. "I soon grew domestic with Lord Halifax, and was as often with Lord Somers as the formality of his nature (the only unconversable fault he had) made it agreeable to me." — *Memoirs relating to Change in Queen Anne's Ministry.*

† Dec. 19. 1719.

‡ Tatler, No. 130. 7th Feb. 1710.

describes:—"John Lord Somers. One of those divine men, who like a chapel in a palace, remain unprofaned, while all the rest is tyranny, corruption, and folly. All the traditional accounts of him, the historians of the last age and its best authors represent him as the most incorrupt lawyer and the honestest statesman, as a master orator, a genius of the finest taste, and as a patriot of the noblest and most extensive views; as a man who dispensed blessings by his life and planned them for posterity."* (Horace Walpole.)

The impartial Tindal describes the Chancellor of King William: — "As he was one of the ablest and most incorrupt Judges that ever presided in Chancery, so his great capacity for all affairs made the King consider him beyond all his ministers; and he well deserved the confidence that the King expressed for him on all occasions."† (Tindal.)

The Tory Smollet cannot deny the merits of Somers: — "He was well skilled in the law, as in many other branches of polite and useful literature. He possessed a remarkable talent for business, in which he exerted great patience and assiduity; was gentle, candid, and equitable; a Whig in principles, yet moderate, pacific, and conciliating."‡ (Smollet.)

Nay, the venomous Ralph, who is disposed to abuse every man of liberal principles, is compelled thus to characterise a Whig leader: — "In his capacity of Chancellor, Lord Somers is undoubtedly irreproachable: and he that did not acknowledge his abilities in state affairs, must either have none of his own, or, through prejudice and perverseness, must have forfeited the use of them. It was to his abilities as a statesman as well as a lawyer, he owed his advancement. Whether advising as a minister, or standing in the circle as courtier, presiding in the House of Lords as Speaker, conferring or altercating with foreign ministers, giving despatch to suitors, or doing the honours of his table, where he 'became all things to all men,' he was the most extraordinary man of his time."§ (Ralph.)

Unlike Lord Thurlow, and others who, having contrived to be celebrated in their own age, have been undervalued by

* Works, vol. i. 430.
† Tind. Cont. Rap. xiv. 445.
‡ Smol. i 166.
§ Ralph, ii. 784.

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Mackintosh.

posterity, the fame of the subject of this memoir has gone on increasing from generation to generation, in proportion as his character and his public services have been examined, and as the science of government has been better understood. "Lord Somers," says Mackintosh, "seems to have nearly realized the perfect model of a wise statesman in a free community. His end was public liberty; he employed every talent and resource which were necessary for his end and not prohibited by the rules of morality. His regulating principle was usefulness. His quiet and refined mind rather shrunk from popular applause. He preserved the most intrepid steadiness, with a disposition so mild, that his friends thought its mildness excessive, and his enemies supposed that it could be scarcely natural."* Lord John Russell, observes that: "Somers is a bright example of a statesman who could live in times of revolution without rancour, who could hold the highest posts in a Court without meanness, and who could unite mildness and charity to his opponents, with the firmest attachment to the great principles of liberty, civil and religious, which he had early espoused, long promoted, and never abandoned."† And Lord Mahon, in language more impressive than a laboured panegyric, referring to Lord Somers, exclaims, "I know not where to find a more upright and unsullied character than his. He had contracted nothing of the venality and baseness of the age."‡

Lord John Russell.

Lord Mahon.

Warton.

I may add the sincere though poetical tribute of Warton, in his address to Lord Chatham, upon "Trinity College, Oxford," the place of education of our two most distinguished patriots:

> "In that calm bower which nurs'd thy thoughtful youth
> In the firm precepts of Athenian truth,
> Where first the form of British liberty
> Beam'd in full radiance on thy musing eye —
> That form sublime, whose mien with equal awe
> In the same shade unblemish'd SOMERS saw."

Addison.

I shall conclude with the crowning testimony of Addison, in the "FREEHOLDER," which, be it remembered, was offered when Somers had been consigned to the tomb, and had left no one to bear his name. "He had worn himself out in his

* Life of Mackintosh. † History of Europe. ‡ History of England.

application to such studies as made him useful or ornamental to the world, in concerting schemes for the welfare of his country, and in prosecuting such measures as were necessary for making those schemes effectual; but all this was done with a view to the public good that should rise of these generous endeavours, and not to the fame that should accrue to himself. Let the reputation of the action fall where it would, so his country reaped the benefit of it, he was satisfied. As this turn of mind threw off, in a great measure, the oppositions of envy and competition, it enabled him to gain the most vain and impracticable into his designs, and to bring about several great events for the safety and advantage of the public, which must have died in the birth had he been as desirous of appearing beneficial to mankind as of being so. His life was in every part of it set off with that graceful modesty and reserve, which made his virtues more beautiful the more they were cast in such agreeable shades. His great humanity appeared in the minutest circumstances of his conversation. You found it in the benevolence of his aspect, the complacency of his behaviour, and the tone of his voice. His great application to the severer studies of the law had not infected his temper with any thing positive or litigious; he did not know what it was to wrangle on indifferent points, to triumph in the superiority of his understanding, or to be supercilious on the side of truth. He joined the greatest delicacy of good breeding to the greatest strength of reason. By improving the sentiments of a person with whom he conversed, in such particulars as were just, he won him over from those points in which he was mistaken; and had so agreeable a way of conveying knowledge, that whoever conferred with him grew the wiser, without perceiving that he had been instructed. His principles were founded in reason and supported by virtue, and therefore did not lie at the mercy of ambition, avarice, or resentment. His notions were no less steady and unshaken, than just and upright. In a word, he concluded his course among the same well-chosen friendships and alliances with which he began it." *

* Freeholder, No. 39.

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The perfect consistency of Lord Somers's career.

This writer, as the climax of his eulogy, does seize upon the great felicity of Lord Somers,— that throughout a long public life he ever steadily adhered to the same principles and to the same party. Respectable politicians have seen reason to adopt a policy which they have long opposed, and, abandoning early associates, to join those whom they have been accustomed boisterously to assail; but although such changes may admit of defence or apology, surely he is most to be envied whose consistent conduct can be liable to no reproach or suspicion, — even should it have prevented his rise, instead of leading him to fame and to power. Lord Somers, like the great Prince whom he served, was most fortunate in this, that duty and ambition always concurred in pointing out the straightforward path for him to tread. His course may therefore be considered more uniformly virtuous, and more truly noble, than that of any man who ever held the Great Seal of England.

His heirs.

Lord Somers not having been married, his title died with him. His heirs were his two sisters, one of whom was married to Charles Cocks, Esquire, of Castleditch, and the other to Sir Joseph Jekyll, the Master of the Rolls. From the former is descended the present Earl Somers, whose grandfather was created Baron Somers in 1784, and whose father in 1821 was raised to the Earldom.*

* Grandeur of the Law, 100.

# CHAPTER CXII.

## LIFE OF LORD KEEPER WRIGHT.

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Insignificance of Lord Keeper Wright.

It seems strange that I should have to introduce into my list of Lord Chancellors and Lord Keepers of the Great Seal a man so little prominent either for abilities or crimes. To his obscurity he owed his promotion. Burnet, in describing the perplexity which, on the removal of Lord Somers, arose about the appointment of a successor, and the necessity for a temporary commission, says, "They thought that all the great men of the law were aspiring to that high post, so that any one to whom it should be offered would certainly accept it; but they soon found that they were mistaken, for, what by reason of the instability of the Court, what by reason of the just apprehension men might have of succeeding so great a man, all to whom the Seals were offered excused themselves. After a few days they were given to Sir NATHAN WRIGHT, in whom there was nothing equal to the post, much less to him who had lately filled it."* The occasional occurrence of such elevations seems wisely contrived by Providence to humble the vanity of those who succeed in public life, and to soften the mortification of those who fail. But this dull man actually held the Great Seal above five years, acting as Lord Keeper to two English monarchs, and it therefore becomes my duty to give some account of his origin and of his career.

Difficulty in the appointment of a successor to Lord Somers.

Birth of Sir Nathan Wright.

Sir Nathan Wright was the son of a clergyman, the Rev. Ezekiel Wright, B. D., Rector of Thurcaston, in the county of Leicester, — where he was born on the 11th of February, 1653. In 1668 he was entered of Emanuel College, Cambridge, but I find nothing more of him academically. He studied the law for seven years in the Inner Temple, and is said to have attended diligently at "moots" and "readings." His father died when he was very young, leaving him a mo-

Education.

* Burnet, iii. 335.

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derate fortune. Upon this, in his twenty-third year, he married, and while it lasted, he rather neglected his profession: but alarmed by an encreasing family and decreasing means, he looked out for clients, and he acquired a considerable share of plodding business. Although he found it convenient to turn out a very stanch Tory, he seems to have started as a Whig, for having been elected Recorder of Leicester, in 1680, he was removed from the office, and replaced by the Earl of Huntingdon, in the year 1685, the town being then deprived of its charter;—and he was reappointed in 1688, when municipal corporations were revived on the approach of the Prince of Orange.

April 11. 1692. He is called Serjeant.

In 1692, he was called to the degree of Serjeant at Law, with thirteen other utter barristers, to whom Lord Commissioner Trevor, when they delivered their rings to him in the Court of Chancery, addressed an eloquent discourse on the duties of their new degree. He now had a controversy (and it then seemed probable that he never would be engaged in one more important), "whether he was entitled to precedence over his brother Bonithon, to whom he was junior as a barrister, but whose writ was tested after his, although the writs were returnable the same day?" The future Lord Keeper succeeded in this noble strife against "brother Bonithon,"—and yet the same question being afterwards raised before himself holding the Great Seal, on another call of Serjeants, —to the horror of Westminster Hall he decided in favour of "anciety of standing" against "priority of writ." *

He is made King's Serjeant, and knighted.

Professing to support the government,—in 1696, by the favour of Lord Somers he was called within the bar as King's Serjeant, and he received the honour of knighthood. He practised almost exclusively in the Court of Common Pleas, except when "riding the Midland Circuit," but notice is taken of a few extraordinary cases in which he was employed. On the trial of the Earl of Warwick before the Peers, for murder, he was leading counsel for the Crown, but he satisfied himself with reading over the indictment,

* See 1 Lord Raymond, 604. In a note to "Nicholls' Leicester" it is observed that "perhaps, in the language of Plowden, he would say, '*that when he was to determine for another, not for himself, the case was altered.*'"

leaving the statement of the case to the Attorney General*; — he made a speech to the Jury, in prosecuting a lady at the Old Bailey for forging a bond for 40,000*l.*, and obtained a conviction, with a sentence of fine — forgery being then only a misdemeanour at common law †; — and he gained some little distinction by what really appears to have been rather a spirited harangue, delivered by him at the bar of the House of Commons, in support of the Duke of Norfolk's divorce, which was supposed to have carried the bill through, notwithstanding a strong opposition to it. ‡ But he never was himself a member of parliament, and hardly aspiring to be a puisne Judge, much less Attorney or Solicitor General, his real ambition was to retain his snug business at the bar, and "to die a Nisi Prius leader." §

His obscurity when made Lord Keeper.

What then must have been his astonishment when in the month of May, 1700, he received an offer of the Great Seal! We must consider how many had already refused it; that he was considered a sound lawyer; that previous equity training was not then much thought of; that he was a man of decent character; that he professed high church principles, which were now gaining the ascendency; and that, seeing the decline of the Whigs, he had for some time renounced all their errors. It is said that even *he* hesitated before he would agree to touch the Great Seal (in such bad order was it); but he had lately had a severe fit of illness, which rendered it doubtful whether he could much longer undergo the fatigues of bar-practice. He consented, therefore, — and without trying to make any stipulation for peerage, grant, or pension.

He is sworn in.

The Great Seal was delivered to him by King William at Hampton Court, on the 21st of May, 1700, and he was at the same time sworn a Privy Councillor.‖

* 13 St. Tr. 939. 954. † Ib. 1250. ‡ Ib. 1355.

§ Memoirs of Mr. Surrebutter's professional career.

"Deaf as a post, and thick as mustard,
He aim'd at wit, and bawl'd and bluster'd,
*And died a Nisi Prius leader* —
That genius was my Special Pleader."

‖ London Gazette. — "Hampton Court, May 21. 1700. His Majesty in Council was this day pleased to commit the custody of the Great Seal to the Right Honourable Sir Nathan Wright, Knight, one of his Majesty's Serjeants-

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His incompetency.

I do not find any record of his inauguration in Westminster Hall, but this, no doubt, took place about a fortnight afterwards, on the first day of Trinity Term. He showed a laudable consciousness of his own deficiency, by having a treatise compiled for him to teach him the rudiments of Equity. This MS. is extant, and is entitled "Rules and Practice in the Court of Chancery, with a Complete Index." At the conclusion is the following memorandum. "N.B. This Tract was drawn up for the use of Sir Nathan Wright when he was made Lord Keeper."

Wrong decision by him.

In the first important case which came before him he got wrong.* A testator having bequeathed "15*l.* a piece to each of his relations of his father's and mother's side," left several cousins-german, some of whom had children, and the question was "whether these children were relations of the testator within the meaning of the bequest." The Lord Keeper held that they were; and they had their 15*l.* a piece as well as their parents. There was no appeal, probably from the small amount of the sums in dispute; but it was before understood, and it has often been decided since, that such a bequest is limited to relations who would take as next of kin under the "Statute of Distributions."†

Other cases determined by him.

One of the most remarkable decrees pronounced by him while he was in office, was that for dissolving the Savoy, (July 13. 1702); and in the same year, (Nov. 30.) he reversed a decision of his great predecessor, Lord Somers, touching a right of dower. On a bill of review brought upon this reversal, Lord Cowper, C., declared, that as the title of the widow to dower was a point of right so doubtful that the Court had held different opinions, and as the decree last made had been so long unquestioned, his Lordship did not think fit to vary it.‡

The case before Lord Keeper Wright which excited the

at-Law, with the title of Lord Keeper of the Great Seal of England; and the usual oaths of Privy Councillor and Lord Keeper being administered to him accordingly, he took his place at the board."

* *Jones* v. *Beale*, T. T. 1700.; 2 Vern. 381.

† *Gayer* v. *Gayer*, 2 Vern. 538.

‡ 5th Dec. 1715, it was finally affirmed in Dom. Proc. on appeal. Journals, H. of Lords, vol. xx. p. 458.; 1 Br. P. C. 597. fol. ed.; *Laurence* v. *Laurence*, 1 Freeman, 234.

greatest interest, was one of the same class as *Stradling* v. *Stiles*, respecting the "pye-balled horses."* Here the words were, "I give my house, and all the goods and furniture therein, to my son Robert, *except the pictures, which I give to my sons James and Edward.*"† The testator had been a very great picture fancier, and was constantly changing his pictures. He bought many after making his will, and he had many pictures hung in a gallery, and many packed up in boxes in the house. The Lord Keeper held, with general approbation, that the whole of the pictures of which the testator died possessed went to James and Edward.

He seems to have been very cautious; and although his insufficiency was often dwelt upon, he was allowed to mean fairly. I find only one of his decrees reversed on appeal.‡ On questions of difficulty he prudently called in the assistance of Holt, and other common law Judges.§ Although there were always heavy complaints of his slowness, he contrived for some time to get through the business of the Court with decent credit: but arrears grew upon him, and his health declining, "the delays of Chancery" were resounded more loudly than at any former period, and before the end of his five years there was a general wish that the Great Seal should be taken from such feeble hands.

He acts as Speaker of the Lords.

On the 20th of June, 1700, he first sat Speaker in the Lords, and he constantly occupied the woolsack during the sittings of the House, while he continued to hold the Great Seal—merely putting the question, and having no influence over their proceedings.

On the prosecution of Lord Somers and the late ministers

* Reported by Martinus Scriblerus, where the question was "whether, under a bequest of all the testator's *black and white horses*, PYE-BALLED horses should pass."

† *Roach* v. *Hammond*, Pre. Ch. 401.; Anon. 1 P. Wms. 327.; *Harding* v. *Glyn*, 1 Atk. 469.; *Smith* v. *Campbell*, 19 Vesey, 400.; Coop. 275.

‡ *Earl of Huntington* v. *Countess of Huntington*, 2 Vern. 437., respecting the redemption of a mortgage.—He seems to have exercised an independent judgment in putting the Great Seal to commissions which the government wished to pass Vernon, under date June 29. 1700, speaking of the commissions to authorise the ships of the East India Company to capture pirates, says—"My Lord Jersey lately sent one of these commissions to my Lord Keeper, with a warrant to affix the Great Seal to it; but he boggles at it, and takes it to be illegal."

§ See *Needham* v. *Smith*, 2 Vern. 463

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impeached along with him, the Lord Keeper was very unwillingly the organ of the House of Lords, in announcing their Lordships' "Resolutions," which refused the requisition of the Commons for the appointment of a joint committee to regulate the trials — which called upon them peremptorily to proceed to make good their charge — and which pronounced a verdict of acquittal.* Having been brought forward by the Tories, he naturally attached himself zealously to that party, and was very desirous that the Whig leaders should be convicted.

A Lord Justice.

As often as the King went abroad, the Lord Keeper was appointed a Lord Justice, coming in the commission of regency after the Archbishop of Canterbury, the Princess Anne being still excluded; but during this reign, even when the Tories were most powerful, he was not at all listened to in the Cabinet, and he seldom ventured to offer any opinion, unless it were for more severe measures against the Dissenters.

About to be dismissed at the end of King William's reign.

When the reaction took place on the recognition by Louis XIV. of the Prince of Wales as King of Great Britain, and a Whiggish House of Commons was about to assemble, Lord Keeper Wright laid his account with speedy dismission, and his worst fears seemed confirmed by the mortifying fact, that without himself being consulted, the King's speech was prepared by the Ex-chancellor Lord Somers. But his position was very suddenly altered by the death of William, before the contemplated changes in the government could be carried into effect.

A great favourite with Queen Anne.

Wright had been represented to Anne as a devoted friend to the Church, and upon her accession she was much pleased with the thought of having him for "Keeper of her Conscience," — more especially on account of the very strong prejudice which she had been taught to foster against his predecessor.

March 8. 1702. Her compliment to him in returning the

At her first Council held on the day of William's death, Sir Nathan Wright surrendering the Great Seal into her hands, she instantly returned it to him, with the title of Lord Keeper, saying, "that she would not have done so, if

* Ante, p. 161.

there had been a worthier man in the kingdom to whom she could have delivered it." He was again publicly installed in the office, on the first day the Courts sat in the following Easter Term.*

Great Seal to him.

Marlborough and Godolphin being now completely absorbed in foreign affairs, and resolved to carry on the plans of the GRAND ALLIANCE, which their party had strongly condemned while in opposition, left for a time the administration of the government at home very much in the hands of the Lord Keeper, and the more violent high-church section of the Cabinet. The consequence was that Lord Somers was not allowed to be sworn of the Privy Council to the Queen, and that his name was struck out of the commission of the peace, even in his native county. At the same time many magistrates were removed along with him, who had been appointed while he held the Great Seal for being well affected to the Revolution, and they were replaced by others who laboured under the suspicion of Jacobitism. This system seems to have been acted upon to a great extent for a long while, but at last (as we shall see) it drew down the strong animadversion of parliament.

His conduct with respect to commissions of the peace.

Although Wright's influence was now supposed to be much greater than it had been under William, he does not seem to have interfered beyond the exercise of the functions immediately connected with his office. He had nothing to do with the Queen's speech at the opening and close of the session beyond handing it to her Majesty, and he never addressed the two Houses except when announcing the prorogation in her name.

The only opportunity he had for oratorical display was in returning thanks, by order of the House, to the Duke of

He returns thanks to the Duke

* "1702, April 29. — (being the first day the Courts sat in Westminster this term by reason of her Maj. writts of adjournment)

"*Sir Nathan Wrighte* having immediately after the decease of the late King delivered the Great Seal to her present Majesty, Queen Anne, and received it from her again as Lord Keeper, came this 29th of April into the Court of Chancery, accompanied with the Master of the Rolls, Judges, King's Serjeants, and Councill, and there standing in his place before he entered upon business, took the oath of the Lord Keeper of the Great Seal of England, the Master of the Rolls holding the book, the oath being read by George Wrighte Clerk of the Crown." Fol. 144. Roll 1701—1714.

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of Marlborough for the battle of Blenheim, Dec. 14. 1704.

Marlborough for the great victories obtained over the French. Thus, on the hero's return after the battle of Blenheim, we find the following entry in the Journals: — "The House understanding that his Grace the Duke of Marlborough was come to town; and being very sensible of the great and singular service done by him to her Majesty and this kingdom, and the honour he has done the English nation: It is thereupon ordered by the Lords Spiritual and Temporal in Parliament assembled, that the Lord Keeper of the Great Seal of England do (when the Duke of Marlborough is present) give him the thanks of this House for the same."

Accordingly, on the following day, the Duke being present in his place, Lord Keeper Wright thus addressed him: —

"My Lord Duke of Marlborough,

"The happy success that has attended her Majesty's arms, under your Grace's command, in Germany, the last campaign, is so truly great, so truly glorious in all its circumstances, that few instances in the history of former ages can equal, much less excel, the lustre of it.

"Your Grace has not overthrown young unskilful generals, raw and undisciplined troops: but your Grace has conquered the French and Bavarian armies; armies that were fully instructed in all the arts of war, select veteran troops, flushed with former victories, and commanded by generals of great experience and bravery.

"The glorious victories your Grace has obtained at Schallenburgh and Hochstet are very great, very illustrious, in themselves; but they are greater still in the consequences to her Majesty and to her allies. The Emperor is thereby relieved; the empire itself is freed from a dangerous enemy in the very bowels of it; the exorbitant power of France is checked; and, I hope, a happy step made towards the reducing of that monarch within his due bounds, and securing the liberties of Europe.

"The honour of these glorious victories, great as they are, under the immediate blessing of Almighty God, is chiefly, if not alone, owing to your Grace's conduct and valour.

"This is the unanimous voice of England, and of all her Majesty's allies.

"My Lord, this most honourable House is highly sensible of the great and signal services your Grace has done her Majesty in this campaign, and of the immortal honour you have done the English nation; and have commanded me to give your Grace thanks for the same; and I do accordingly give your Grace the thanks of this House for the great honour your Grace has done the nation, and the great and signal services which you have done her Majesty and this kingdom in the last campaign."

Nov. 1704. March, 1705. His conduct in the Aylesbury case.

When the dispute arose between the two Houses in the Aylesbury case, the Lord Keeper was strongly inclined to take the part of the Commons, but he had no opportunity of expressing his opinion in the House of Lords, being confined to put the question upon the reversal of the judgment in *Ashby* v. *White*, and upon the several resolutions against the right of the other plaintiffs to bring actions for the corrupt rejection of their votes. It is rather surprising that he was not raised to the peerage, that he might answer the Ex-chancellor in debate. This would have been agreeable to the Queen; but from his deficiency in speaking, and his want of constitutional learning and general information, his colleagues thought it was more prudent to keep him silent. Had he possessed much courage, he might have gained great distinction, for he might have liberated by his own single authority in the Court of Chancery, Paty and the others who were committed by the Commons. After they had been remanded by the Court of Queen's Bench, they applied to him for a writ of *habeas corpus*, which was granted by him.* But his heart

* "ANNA Dei gratiâ Ang. Sco. Fran. et Hiber. Regina, Fidei Defensor, &c. Samueli Powel serv. ad arma attend. Honorab. Dom. Com. ejus deputato et deputatis, Salutem. Precipimus vobis et cuilibet vestrum quod corpus Jacobi Montague Ar. nuper capt. et in custod. vestrâ vel alicujus vel unius vestrum ut dicitur detent. sub salvo et securo conduct. una cum die et causa captionis et detentionis pred. Jac. Montague quocunque nomine idem Jac. Montague censeatur in eadem, habeatis seu aliquis vel unus vestrum heat cor. predilecto et fidel. nostro prehonorab. Nathan Wright Mil. Dom. Cust. Mag. Sig. nostri Angl. apud Dom. Mansional. suam in parochia Sancti Egidii in Campis in com. Midd. immediate post acception. hujus brevis ad faciend. subjaciend. et recipiend. ea omnia et singula quæ dictus dominus Custos Mag. Sig. nostri Angl. de eo adtunc ibidem cons. in hac parte. Et habeatis aliquis vel unus vestrum habeat ibi hoc breve. Teste meipso apud Westm. sexto die Martii anno regni nostro tertia."

Indorsed.—"Per statum tricesism. prim. Caroli Secundi Regis.

"N. WRIGHT, C. S."

failed him. The Commons immediately resolved "that no commoner of England committed by the House of Commons for breach of privilege, or contempt of that House, ought to be by any writ of *habeas corpus* made to appear in any other place, or before any other judicature, during that session of parliament wherein such person was so committed; that the Serjeant-at-arms do make no return of or yield any obedience to any such writ of *habeas corpus*, and for such his refusal that he have the protection of the House of Commons; and that the Lord Keeper be acquainted with the said resolutions, to the end that any such writ of *habeas corpus* may be superseded as contrary to the laws and privileges of this House."

The Lords construed these resolutions into a threat to commit their Speaker; and in an address to the Crown, drawn by Lord Somers, say, "The Lord Keeper is a commoner, and if he disobeys, it is a breach of privilege; and if they should carry it so far as to order him into custody, he may seek, but is not to have, relief from any *habeas corpus*."

Wright seems to have been afraid of being sent to prison, or to have been swayed by a wish to support his Tory partizans in the House of Commons, for he called a meeting of the Judges, and they, with the exception of Holt, having concurred in the opinion that "neither the Keeper of the Great Seal, nor any Judge or Court of Justice, could examine a commitment by either house of parliament for a breach of privilege," he refused to liberate the Aylesbury men, and they remained in custody till the prorogation. When the Crown was petitioned for a writ of error to the House of Lords upon the judgment of the Court of Queen's Bench, "quod cognitio captionis et detentionis prædictæ non pertinet ad curiam Dominæ Reginæ," all the Judges except one having given an opinion that the writ was demandable *ex debito justitiæ*, leaving the question to be decided thereafter, whether a writ of error lay, — and the Lords having resolved that it was for them, upon the argument of the writ of error, to determine whether it lay, and not for the Crown by refusing it, — he showed very little spirit by not immediately issuing one under the Great Seal, which was his peculiar function, but

he hesitated, and the House of Lords having addressed the Queen to direct the writ of error to issue, he concurred in advising her equivocating answer: "My Lords, I should have granted the writ of error desired by this address, but finding it absolutely necessary to put an immediate end to this session, I am sensible there could have been no further proceedings upon it." * A dissolution of parliament soon followed.

April 5. 1705. Returning fortune of the Whigs.

Although the Tories had been so powerful in the House of Commons, Marlborough and Godolphin had been gradually leaving that party, and, adopting not only the foreign policy but the principles of domestic administration of the Whigs, were admitting Whig leaders into the Cabinet as fast as the prejudices of the Queen would permit. The brilliant success of the war against France had given great popularity to those who planned it, and the elections went very much in their favour. "When the elections were all over, the Court took more heart: for it appeared that they were sure of a great majority, and the Lord Godolphin declared himself more openly than he had done formerly in favour of the Whigs. The first instance given of this was the dismissing of Wright, who had continued so long Lord Keeper that he was fallen under a high degree of contempt with all sides, — even the Tories, though he was wholly theirs, despising him." †

Lord Keeper Wright to be dismissed.

Motion against him about the appointment of magistrates.

He had personally fallen into such general disrespect, that even if the general character of the administration had remained unchanged, he must soon have been removed, notwithstanding the liking that the Queen had conceived for him. In the session of 1704, he had been much damaged by a motion in the House of Lords respecting his appointment and removal of magistrates. "Many gentlemen of good estates and ancient families had been of late put out of the commission, for no other visible reason but because they had gone in heartily to the Revolution, and had continued zealous for the late King. This seemed done on design to mark them, and

* 14 St. Tr. 695—890.; 6 Parl. Hist. 376—436.
† Burnet, iv. 122.

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to lessen the interest they had in the elections of members of parliament: and, at the same time, men of no worth nor estate, and known to be ill affected to the Queen's title, and to the Protestant succession, were put in, to the great encouragement of ill-designing men. An address was moved to the Queen, complaining of the commissions of the peace, in which the Lords delivered their opinion that such as would not serve or act under the late King, were not fit to serve her Majesty." * In the course of the debate, it came out that the name of Lord Somers having been removed from all commissions of the peace, had never yet been restored, even for the county in which he was born, or that in which he resided. The vote, which was carried, amounted to an address for the dismissal of the holder of the Great Seal, thus charged with having abused its powers." †

If, by such proceedings, he made himself obnoxious to one party, he ingratiated himself with another. But he incurred the contempt of all sides by his vacillation and pusillanimity in the Aylesbury case, and the delays in the Court of Chancery were now such as to amount to a denial of justice.

Oct. 11. 1705. Transfer of the Great Seal to Lord Cowper.

For all these reasons, before the new parliament assembled, the Great Seal was taken from him, and delivered to that great orator, lawyer, and statesman, WILLIAM COWPER. The difficulty was to reconcile the Queen to this transfer, but it was at last accomplished through the influence of the Duchess of Marlborough, which was still irresistible. Sarah represents the whole as her own doing, although on this occasion she was only acting as prompted by her husband and Godolphin. "I prevailed with her Majesty to take the Great Seal from Sir Nathan Wright, a man despised by all parties, of no use to the Crown, and whose weak and wretched conduct in the

* 4 Burnet, p. 53.

† Sir Nathan, nailed to the woolsack with his tongue tied, must have felt very uncomfortable during this debate in which he was so spoken at. Vernon, in a letter dated May 31. 1704, thus describes it: "My Lord Keeper had many rubs given him about persons put in and left out of the Commissions; particularly that my Lord Somers was left out of the Commission of the Peace of Worcestershire, which they told him was the more scandalous, since that Lord had sat on that woolsack with more reputation than those that came either before him or after him."

Court of Chancery had almost brought his very office into contempt." *

Retreat of Sir N. Wright.

During his tenure of office he had amassed immense wealth, and he immediately retired to one of the estates he had purchased, Chaldecott, in Warwickshire.† There he lived in complete seclusion till he died, almost forgotten, on the 4th of August, 1721.‡

His death and burial.

He was buried in the parish church, where there was erected to his memory an elegant tablet of white marble, bearing his arms finely emblazoned, with his motto "UNICA VIRTUS NOBILITAS," and the following inscription:—

M. S.
PRÆNOBILIS VIRI D. NATHAN WRIGHT, EQ AUR.
QUI QUINQUE ANNOS
MAGISTRATU FUNCTUS DNI CUSTODIS M. SIGILLI ANGLIÆ,
ÆQUUS ET INTEGER, AC TANTO NIHIL IMPAR MUNERI.
SEDECIM PROPE ANNOS, QUOT EXINDE VIXIT,
FAMÆ SATUR ET QUAM MODICI COMPOS VOTIS
EX ANIMO RURA COLUIT VICINA,
PIUS ET HUMANUS,
A QUOQUE BONO ET PRUDENTI DESIDERATISSIMUS
OBIIT AUGUSTI 4° ANNO DNI 1721. ÆTAT SUÆ 68."

Characters of him.

We need not dispute that he was amiable in private life, but it is only the piety of a descendant, which could prompt the assertion, that he was "well qualified for his office." Another panegyrist is John Dunton, who, after extolling his talents and virtues, says, "In a word, he excels in every grace; but his great humility is the most shining character of all his actions, and his large charity the most useful:" un-

* She adds, satirically: "His removal, however, was a great loss to the Church, for which he had ever been a warm stickler. And this loss was the more sensibly felt, as his successor, my Lord Cowper, was not only of the Whig party, but of such abilities and integrity as brought a new credit to it in the nation."—"Account of her Conduct," p. 159.

† He likewise bought Brokesly, Hurtshill, and other large estates in Leicestershire.—Nich. Leicest. iii. 194.; iv. 1036.

‡ It has been supposed that he resumed his practice at the bar, because, in December, 1710, Catherine Hall, Cambridge, having taken the opinion of Sir Edward Northey, the Attorney General, on a question in which they were interested, stated that they were in possession of an opinion given at the same time by Sir Nathan Wright, in which he referred to, and expressed his concurrence, in the opinion of Sir E. Northey. But the Ex-Lord Keeper must have been consulted only as a friend of the College; and, as *his opinion cost nothing*, according to the well-known maxim, probably, *it was worth nothing*. See 2 Russ. & Myl. Ch. Rep. 599.

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fortunately adding this climax, "and Mr. Luke Dunton, my brother, had an honourable post by his recommendation." *

Burnet says: "Wright was a zealot to the party, and was become very exceptionable in all respects: money, as was said, did every thing with him; only in his Court I never heard him charged for any thing but great slowness, by which the Chancery was become one of the heaviest grievances of the nation.† He was sordidly covetous, and did not at all live suitably to that high post. He became extremely rich, yet I never heard him charged with bribery in his Court, but there was a foul rumour with relation to the livings of the Crown that were given by the Great Seal, as if they were set to sale by the officers under him." ‡

In Davis's Characters of the Court of Queen Anne, there is the following account of him: "SIR NATHAN WRIGHT is son of a clergyman; a good common lawyer, a slow Chancellor, and no civilian. Chance more than choice brought him the Seals." § Granger says, "He was one of those characters that sometimes chance makes great. When Lord Somers resigned, never was such a change. The very men who had erected were ashamed of worshipping the idol they had set up. This weak but incorruptible man presided in Chancery until 1705, when he was fairly hooted out of it, and Cowper, a luminary, succeeded him. What a figure does he make between two such characters as Somers and Cowper?" ||

Lord Keeper Wright's jest.

To show his wit, as well as his honesty, an anecdote of him is related which I must not suppress, lest, in not discovering point in his joke, the dulness should be imputable to the biographer. "A watchmaker who had a cause depending in Chancery, a day or two before it was likely to come on, sent the Lord Keeper a present of a very fine time-piece, but the upright Judge returned it, with this message: '*I have no doubt of the goodness of the piece, but it has one motion too much for me.*'" ¶

While he was at the head of the law, there was a considerable improvement introduced into the administration of criminal justice, the credit of which may be due to him,

* Life and Errors, p. 428. † Burnet, iv. 55. ‡ Ibid. iv. 122.
§ Swift in his notes on this work, adds "*very covetous.*"
|| Granger, by Noble, i. 35. ¶ Ibid.

although, from his having no voice in parliament, we do not exactly know how he viewed it. In early ages, a person accused of treason or felony was not allowed to produce witnesses in his defence; and down to the beginning of the reign of Queen Anne, although witnesses might be heard for the prisoner, they were examined unsworn, so that little attention was paid to their testimony. But by 1 Anne, stat. 2. c. 9., it was enacted, "that in all cases of treason and felony witnesses for the prisoner shall be examined upon oath; in like manner as the witnesses against him." So slowly does prejudice give way, that near a century and a half still elapsed before he was allowed the benefit of counsel.

Improvement in criminal trials in allowing witnesses for the prisoner to be examined on oath.

Sir Nathan Wright was sufficiently eminent as Lord Keeper to be made the subject of a satire, entitled "THE COUNTRY PARSON'S HONEST ADVICE TO THAT JUDICIOUS LAWYER AND WORTHY MINISTER OF STATE, MY LORD KEEPER WRIGHT," of which the following may be taken as a fair specimen:—

Satire upon him.

"Be wise as Somerset, as Somers brave,  
As Pembroke airy, and as Richmond grave,  
Humble as Orford be, and Whartons' zeal  
For Church and Loyalty would fit thee well,  
Like Sarum I would have thee love the Church,  
He scorns to leave his mother in the lurch;  
For the well governing your family  
Let pious Haversham your pattern be,  
And if it be thy fate again to marry,  
And S—q—r's daughter will thy year out tarry,  
May'st thou use her as Mohun his tender wife,  
And may she lead his virtuous Lady's Life:  
To sum up all, Devonshires' Chastity  
Bolton's Merit, Godolphin's Probity,  
Halifax his Modesty, Essex's Sense,  
Montague's Management, Culpepper's Pence,  
Tenison's Learning, and Southampton's Wit,  
Will make thee for an able statesman fit."

Soon after came out "THE LOCUSTS, or CHANCERY PAINTED TO THE LIFE, A POEM." The poet, after praising some of the common-law judges, thus proceeds:—

Another Satire.

"Enough of law, my Muse, now Satyr rise  
And show how Chanc'ry's stock'd with villanies;  
Let bitter'st gall for ink supply thy pen,  
Spare not their crimes, but lash the worst of men;  
Accursed crew! oh! could I make 'em feel  
My biting words like wounds of perfect steel,

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That on their harden'd consciences I may
Like the tormenting vulture ever prey:
Or punish them, as Midas was of old,
By turning every limb of them to gold."

He then comes in ironical strains to the Lord Keeper, and the reforms of the Court of Chancery:

"Hold, Satyr, stop the venom of thy sting;
Rise, brighter Muse, and of TREBONIUS sing;
Tell all the world how justice fills that seat,
Makes England happy, and TREBONIUS great.
Does he not guide his conscience by the law,
And by that conscience keep base rogues in awe?
Devouring Harpies, that for gold would sell
Their country, office, or themselves to hell.
But he their crimes with vengeance will pursue,
And give to them, as to the just, their due.
See but how bankrupts are twice bankrupt made
By double fees, and by the subtle trade
Of secretaries, sealers, clerks, and knaves,
That lord it o'er poor suitors as their slaves.
But let such in eternal flames expire,
Gorgons and Hydras and Chimeras dire."

His arms.

I feel every disposition to do justice to this successor of à Becket, Wolsey, and Bacon; but I really can find little more to relate of him, except that his arms were, "Azure, two bars, argent, in chief three leopards' heads cabossed, or: Crest, a dragon's head coupé, or, issuing out of a ducal coronet, or." Let me add, "He was a plain man both in person and conversation, of middle stature, inclining to fat, with a broad face, much marked by the small-pox." *

His son rose to be Clerk of the Crown in the Court of Chancery; but I cannot find that the family ever gained any higher distinction.

Farewell to Lord Keeper Wright.

I hope I may now, with a safe conscience, dismiss the worthy Serjeant. No blame is imputable to him. The marvel is that the Tory party, having at this time to boast of a Harcourt and other accomplished lawyers as adherents, should so long have submitted to the degradation of such a Lord Keeper.

"Paulo majora canamus!"

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* Nich. Leicest. iii. 215. *et seq.*

# CHAPTER CXIII.

## LIFE OF LORD COWPER FROM HIS BIRTH TILL HIS APPOINTMENT AS LORD KEEPER.

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Former neglect of biography in England.

We now come to a holder of the Great Seal whose reputation ever outran his promotion, who was a credit to his party, and who conferred lasting benefits on his country. His Life, if written near his own times, might have been most interesting; but the task has been neglected till it must be performed under great disadvantages. Very unaccountably, from the latter end of the seventeenth century till past the middle of the eighteenth, biography was a department of literature almost entirely neglected in England. Little curiosity seems during that period to have existed respecting the private history of men, however distinguished in literature, in statesmanship, or in magistracy. Before the last work of Dr. Johnson, the English public had known no more of many of their eminent poets than, till very recently, they knew of many of their eminent lawyers. What is to be discovered of the Chancellors of Anne and George I. must be searched for in authors who have incidentally mentioned them, or in family papers casually preserved, — and much relating to them, which might have been both amusing and instructive, has irrecoverably perished.*

* "The lives of such eminent men," said Lord Henley in 1833, "as Lord Somers and Lord Hardwicke, have been written in a manner totally unworthy of their high reputation. Of Lord Nottingham, Lord Holt, nay, even of the great Lord Mansfield, we have still but meagre and unsatisfactory accounts; whilst of the Chancellors Cowper, Harcourt, Macclesfield, King, and Talbot — all considerable judges and statesmen in their time, and principal actors in the great political events of their day — we have little information beyond the scanty notices of the Peerage." — *Life of Lord Northington*, p. 3. Since Lord Henley's complaint, Lives of Lord Cowper and several other eminent Judges have appeared in the *Law Magazine*, and have been re-published by my friend Mr. Welsby. Though necessarily labouring under the defect to which I have referred, they display, as might be expected, talent and research, and I have often been indebted to them. It is only because I enjoy more leisure, and I have been furnished with a large body of original materials, that I venture to continue to execute the plan I had announced of writing the Lives

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Cowper's family.

William Cowper is a rare instance of a man born to hereditary rank and competent fortune rising to great distinction in the profession of the law in England. He was the eldest son of a Baronet of ancient descent, and possessed of good landed estates in Kent and in Hertfordshire.

His great-grand-father.

In the reign of Edward IV. the family was seated at Strode, in Kent. Soon after the accession of James I., William Cowper, the head of it, while yet a very young man, was made a Nova Scotia Baronet,—I presume, for the pecuniary consideration usually demanded when that order was instituted. Afterwards, being a favourite of Charles I., an English baronetcy, then considered a higher distinction, was conferred upon him. He is chiefly memorable for being the first of the line who rhymed*; he erected a monument to the author of the "Ecclesiastical Polity," bearing this epitaph of his own composition:—

"Tho' nothing can be spoke worthy his fame,
Or the remembrance of that precious name,
Judicious Hooker; tho' this cost be spent
On him that hath a lasting monument
In his own books; yet ought we to express
If not his worth, yet our respectfulness."

When the civil war broke out, he adhered to the royal cause, and, with his son John, he was long imprisoned, by order of the parliament, in Ely House, Holborn. There John died, leaving an infant son, William, who was the father of the Chancellor. Old Sir William, when liberated, retired to Hertford Castle, which he had purchased and fitted up as a private dwelling. Having seen the great evils which had arisen from carrying to excess high church and high prerogative principles,—although an old cavalier, he instilled a love of civil and religious liberty, as well as of a monarchical form of government, into the mind of his grandson, who became a distinguished "Whig," when this designation was first applied to a party in the state—and from whom sprung a long succession of distinguished Whigs. The first baronet having

His parents.

of all the Chancellors down to the reign of George IV.—I likewise take this opportunity of acknowledging the valuable assistance which I have on several occasions received from Mr. Townsend's "History of the House of Commons."

* Cowper the poet was lineally descended from him.

died at the age of eighty-two, his heir soon after married Sarah, daughter of Sir Samuel Holled, of London, merchant, a lady of great accomplishments, who took unwearied pains with the education of her children. The eldest of these was William, the subject of this memoir, born in the castle of Hertford in the year 1664. His baptismal register has not been found, and the exact day of his birth cannot be ascertained. His parents afterwards resided chiefly in London. His birth.

Having been taught to read by his mother, he was sent to a private school at St. Alban's. There lies before me the original of a letter written by him when eight years of age, which I cannot resist my inclination to copy, as the earliest known composition of him who afterwards refuted Bolingbroke's most powerful paper in the "Examiner," and materially influenced the destinies of the empire: At school.

Letters from him to his mother.

"Dear Mother,

"I thanke you for my Bow and Arrows, which I shall never use But when my master Gives us leave to play. I shall hereafter take more care of my spelling and writing even without ruled lines. My mistress was well brought to Bed of a Daughter on Sunday was Seaven-night, who is to be Christened to day. I hope my Brothers John and Spencer are both very well. I present my humble Duty to my Father and Mother, with my love to my Brothers, remaining

"Your ever obedient Sonne,

"William Cooper.*

"St. Albans, Oct. 27. 1672."

At this school he continued at least till the 5th of August, 1675, as there is a letter by him written from it on that day

* *Sic*, although in his subsequent letters he always signs his name Cowper. They are all directed —

"These
For my ever Honoured
Mother the Lady Cowper,
At her house in the
Charter hous Yard
in
London."

They are written very distinctly in large text — giving earnest of the beautiful hand which Lord Cowper acquired, and always retained.

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to his mother, showing that he had been aiming at a more formal style, which she had not approved of and had suspected to be the composition of the usher: "Indeed," says he, "the other letter was my own indicting, and I thought I had pleased you mighty well, but since you like the other stile best, I will wright so hereafter."

His subsequent education.

From this time till he was entered of the Middle Temple, hardly any thing is known of his education or his history. He certainly never was at any university, and it is doubtful whether he ever was at a public school, although, from evidence given on his brother's famous trial at Hertford for murder, there seems reason to think that they were both for some years at Westminster. Whatever was the nature of his tuition, he became an elegant scholar, and he acquired a taste for polite literature, which adhered to him through life.*

A. D. 1682. Entered at the Temple.

In his eighteenth year he became a Templar, more with a view of mixing with the good society and acquiring the fashionable accomplishments for which the Inns of Court were still celebrated, than of professionally studying the law. But he made the acquaintance of some black-letter lawyers of agreeable manners, who gave him a liking for their craft, and he had fits of severe application to legal and constitutional lore. Afterwards he fell into bad company, and was seduced into haunts of dissipation. His morals for a time were much corrupted, and he formed a connection which was the pretence for the charge subsequently so boldly and pertinaciously brought forward against him, that he was guilty of bigamy. He had for his mistress a young lady in rather a respectable situation of life, whose family lived near his father's residence in Hertfordshire †; and she is said to have brought him two children, a son and a daughter, the former

His early licentiousness.

Groundless charge of bigamy against him.

* Mrs. Manley, speaking of his father under the name of *Volpone*, in her calumnious manner, says — "Whether it were that he was sordidly covetous, or that he could not spare so much from his own expences, he did not bestow a liberal education upon his son, but bred him to the practice of the law in that manner that is the least generous and most corrupt; but HERNANDO (Lord Cowper) had natural parts that surmounted all these inconveniences." — *New Atalantis*, i. 195. Yet her friend Swift is compelled to admit that "he was what we usually call a piece of a scholar, and a good logical reasoner."

† Miss Elizabeth Culling, of Hertingfordbury Park.

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of whom died in infancy, and the latter grew up to womanhood: but there is no foundation whatever for the assertion that he had married her; and, notwithstanding the calumnies of Swift and Mrs. Manley, and the statement with which Voltaire amused Europe, that the Lord Chancellor of England practised and defended polygamy, he had dropped all correspondence with this lady before he was introduced to either of the two wives whom he successively led to the altar.

The first of these was Miss Judith Booth, daughter of a London merchant, a young lady of wit and beauty, but no fortune. I will give a specimen of a young lawyer's love-letter in the reign of James II.:

"To Mrs. Judith Booth,
"Walbrooke,
"London.
"This present.*

"Dearest Madam,

Love letter to his first wife.

"My father hath been with me and employed me some part of this afternoon with himself, and hath ordered me to make some inquiries after a servant; so that I must be worse than my desire in not seeing you this afternoon. I wish my thoughts that are so often with you when I am not, were not invisible: then you might save yourself the trouble of reading such like notes, and see at one view how discontented and vexed they are when I cannot waite on you. You would see how forward and impatient they grow under any other business, and I'm sure without farther apology would excuse me and forgive my absence for their very looks. But since this cannot be, be so good as to think 'em truly and plainly expressed in this paper of

"Your very humble and affectionate Servant,

"WILL. COWPER.

"Temple, June 19. —86."

The match was an imprudent one, for he was still only a

* He usually writes this complimentary word in a contracted form, at the right hand bottom corner of the letter, thus: "pEsent." When he was a member of parliament, on the opposite corner, he wrote "Frank, W. Cowper," or "*Free*, W. Cowper."

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His marriage and reformation.

law student with the prospect of his profession being to him a source of expence rather than of profit. His father was still a young man, and had other sons to provide for. Nevertheless after a year's courtship, and before he was called to the bar, the marriage was celebrated. Though deeply regretted by his family, it proved his salvation, and it may be considered the foundation of all his future prosperity. Mrs. Cowper was soon "as women wish to be who love their lords," and he saw that she and her children must for years depend almost entirely upon his exertions. He therefore forthwith set himself steadily and doggedly to work to fit himself to practise as an advocate in Westminster Hall. No one ever had by nature finer qualities for that profession — a handsome figure, a most intelligent and winning countenance, a silver-toned voice, a quick perception, a lively imagination, and "a head for the law." He gained considerable distinction in the "*moots*," which still went on under the cloisters in the Temple, and great expectations of his future success were formed by those who knew him best.

His diligent study of the law.

Called to the bar.

In Trinity Term, 1688, he was called to the bar, and in a few days he had his first brief — which was to make a motion of some importance in the Court of King's Bench. His wife was then on a visit to his father in the country, and he sent her an account of his performance in a letter thus addressed:

"To Mrs. Judith Cowper, at
"Hertfort Castle,
"Present.

Letter to his wife, with an account of his first motion in the Court of King's Bench.

"I have to tell you, my dear Judith, that I have made my maiden motion in the King's Bench, and that by the help of self-persuasion and reasoning with myself, without much of the bashfulness I am naturally inclined to. Upon asking the standers-by their opinion of my Performance, they only found fault that I did not interweave what I said with civill expressions enough to his Lordshipp, as '*May it please your Lordshipp,*' and '*I am humbly to move your Lordshipp,*' and the like. But that fault will be amended for the future, and to that end you shall find me begin to practis my extra-

ordinary civility on your sweet self. I delivered your letter to your Father with my own hand, who is very well except that his leg begins to trouble him a little again. I was yesterday in the afternoon to see my Lady Parker who is very well, and sends her service to you all at Hertford. I must keep room to present my Duty to my dear Mother, and to subscribe myself as in duty bound,

"Your very faithful and obedient Husband,

"WILL: COWPER.

" Middle Temple, June 28. —88."

His rise on the Circuit.

He chose the Home Circuit, which began soon after, and at Hertford he had several briefs; but he was made more nervous than he had been in the Court of King's Bench, by his mother, and his wife, and a party of ladies whom he knew, coming from the Castle and placing themselves near the Judge on the Bench to hear him plead. However, his courage rose as he advanced, and he acquitted himself to their satisfaction, taking care to interlard his speech with a sufficient number of "May it please your Lordshipps." He did not make enough to pay his expences at Chelmsford, Maidstone, Horsham, or Kingston, but he had a little sprinkling of business at each of these places; and upon the whole he felt encouraged by the start he had made.

A.D. 1688. Landing of the Prince of Orange.

When Michaelmas Term came round, the laws were silent amidst arms. On the 5th of November, the Prince of Orange landed at Torbay.

Cowper raises a volunteer corps and marches to assist him.

Young Cowper, early taught by his father, Sir William, the true principles of the constitution, had indignantly beheld the tyrannical acts which marked the close of the reign of Charles II., and the systematic, incurable despotism which threatened the permanent overthrow of the religion and liberties of the people since the accession of the reigning Sovereign. He saw no possibility of redress from the ordinary means prescribed by the law; he thought that the original contract between the King and the people was broken; and he declared that resistance being necessary, and on account of the spirit displayed by the people being likely to be effectual, it had become a right and a duty. So enthu-

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siastic was he, that he induced his brother Spencer, and several other young gentlemen who shared his sentiments, to the number of twenty-eight, to form themselves into a little volunteer corps, and arming themselves in the best way they could, to march under his command that they might join the Deliverer. James was still at Whitehall, struggling to maintain his authority, when, in the beginning of December, they set forward, and it was thought that a battle might be necessary before he could be expelled. Cowper sent to his wife, in the form of a journal, a minute account of this expedition. Unfortunately the beginning of it is lost, but I am enabled to lay a subsequent part of it before the public. From James's flight the expected campaign had been turned into an ovation:

"Windsor, Saturday, D^r. 15—88.

Journal of his campaign.

"The continuall hurry wee have been in, & our not coming to post-towns at convenient times, have hitherto hinderd me frō writing since my last, frō Ailesbury: Fro whence wee sett out on Tuesday last, & dining at Thame, came about 5 in y^e evening safe to Oxford; in this day's journey I came to understand that our delays at London were fortunate, for y^e day before a party of 12 of y^e King's horse had been as far as Wheatly Bridge, within 5 miles of Oxford, to rob or intercept, w^ch Bridge was our way necessarily: att y^e gate of Oxford wee were stopt by a guard of y^e town militia and disarmed, & it being put to my choice who of severall Lords that were in town wee would wait on, I chose L^d Lovelace, who, knowing my name and business, dismist me & company w^th civility and arms returned: I found y^e University preparing an entertainment of musick for y^e Prince (whō they expected the next day fr Abington), at y^e Theatre & a Dinner at Christ Church College, but y^e news of y^e K^s departure coming at 12 at night, y^e Prince sent word to Oxford of y^e alteration of his intentions & y^t he would march y^e next day to Wallingf (9 miles frō Oxford) for London; so y^t on Wednesd morning wee went, & about 2 that day mett y^e Prince Wallingford, where wee saw him dine at a little Inn w^th gre

variety of meat and sawces, sweetmeats, etc., wch it seems is part of ye fatigue wee admire in great Generals; he lay at ye Mayor's house. The next day being Thursday, he rode all ye way a foot-pace frō thence to Henley, wth a small guard of about 12 horse, but a very large attendance of Lords & Gentry, and abundance of acclamations and expressions of joy frō ye country People. Frō thence on fryday wee came with ye Prince to Windsor Castle, where he was received with usuall expressions of joy, wch is now unfeigned. I ave hitherto quartered in ye same town wth ye Court withut difficulty, & intend now to stay till ye Prince comes to ondon: you cannot conceive ye pleasure there is in seeing fountain of this Happy revolution, and ye new face of things Court, where is nothing of ye usuall affectation of Terror, t extreme civility to all sorts of People; you shall see untry women admitted to see him dine, & as many of ye obles & Principall men as there is rome for dine wth ye rince covered. I omitt private particulars, because I hope ill not be long till I see you at London, wch I guess will on Tuesday; ye Prince, I am informed, stays here to day, ow much longer I cant certainly tell. The army is much ort of ye opin: you conceived of it at London as I'm nformed, & ye foot I see are very little men. Sr. H. Ashurst has ventured to come hither. The coach by wch I send is near going. We are all very well."

*Manners of the Prince of Orange.*

This must be considered an important historical document, giving a most lively picture of public feeling in the great crisis of our fate as a free nation. The reader will probably be surprised by the language respecting "the usual affectation of terror," contrasted with "the extreme civility to all sorts of people," now supposed to be shown by the future King,— for Charles II. was partly redeemed from his vices by his extreme affability, and even James we regard as rather amiable in private life,— while William's reserve and frigid anners from the commencement of his reign, and, as is enerally believed, from the moment of his landing, cast a ıade upon his virtues, and greatly impaired his influence nd his usefulness. But we must make some allowance in ıe exultation of victory for the youthful patriot to whom

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the scene on which he looked back had darker horrors breathed over it, and who saw, in rosy tints, all that was around him and before him.

MS. account of the Chancellor's campaign by his daughter Lady Sarah.

There is likewise an interesting account of this expedition in a MS. in the handwriting of Lady Sarah Cowper, a daughter of the Chancellor, who says that she had her information in the year 1726, from the mouth of her uncle Spencer. She gives some anecdotes showing her father's gallantry, which he modestly concealed:—"When they came near Oxford, they found the city had a garrison, and heard the King's army, said to be about 20,000 men, was encamped just by, but could not learn whether those at Oxford were of the King's or Prince's party. Coming upon the bridge, they found one of the arches broke down, and an officer with three files of musqueteers came up to them, presented their musquets, and asked them who they were for. Twenty-seven of the company did not care to return an answer, fearing lead in their guts if these soldiers were of the King's side; and the gentlemen had only pistols, so must have engaged with great disadvantage; but my father seemed unconcerned, and spurring his horse forward, flung up his hat, and cried the 'Prince of Orange!' which was answered by the soldiers with a shout, and they laid planks for them to enter the town, and they were conducted to Lord Lovelace, who kept it against the King. They stay'd there three days, and then went on to meet the Prince of Orange, and came into London with him."

Cowper returns to his profession.

When William and Mary had been placed upon the throne, men soon returned to the ordinary occupations of life, and William Cowper once more diligently plied his profession on the circuit and in Westminster Hall. A few extracts of letters to his first wife, when they were occasionally separated, while he was getting on at the bar, will be interesting to those engaged in the same struggle, and may amuse the general reader: "I envy you who are in the country, 'tis so close in town; and heartily could wish myself with you, if being in the country in Term time would not look like giving over the profession."† * * * "As for my boy, I

Letters to his wife.

† 21st June, 1690.

would have you venture and hope this cast of the die may prove fortunate, for in all applications we run some hazard, and nothing is certainly beneficial to a child but the care of so good a mother as I am sensible you are." † * * * "Tuesday, six in the afternoon. Word is now brought me, that the great cause of the Farmers of the City Markets is set down before the Lord Chancellor for to-morrow. If it comes on in the morning, I will be with you (if alone) in the afternoon, though I have two Excise causes for Friday in the afternoon. The trial of the Pirates, which I must attend, is on Monday next. So that all I can do is to go backwards and forwards to show my willingness to be with you as much as I can. I know all this does not satisfy you, but this and more I could allege, for my story is true. If I am so unfortunate as not to be credited, I know no way to help that but your coming up to see if it be so or no. I am sure I had so much rather be with you, that the present profit would not tempt me from the country, if it were not for the consequence of throwing myself altogether out of the little good business I have." ‡ * * * [From Kingston, on the Spring Circuit, after excusing his not writing to her from Horsham, from which they were obliged to send the letters "six miles to meet the horse post."] "I write to you from this place, as soon as I arrive, to tell you I have come off without hurt, both in my going and return through the Sussex ways, which are bad and ruinous beyond imagination. I vow 'tis a melancholy consideration that mankind will inhabit such a heap of dirt § for a poor livelihood. The country is a sink of about fourteen miles broad, which receives all the water that falls from two long ranges of hills on both sides of it, and not being furnished with convenient drains, is kept moist and soft by the water till the middle of a dry summer, which is only able to make it tolerable to ride for a short time. The same day I entered Surrey, a fine champaign country, dry and dusty, as if the season of the year had shifted in a few hours from winter to

† 29th July, 1690.

‡ 6th July, 1694.

§ I am now copying this on the boundary between Sussex and Surry, where at this day it is a common expression that those who live on the south side of Leith Hill are "in the dirt." — Abinger Hall, 3d October, 1845.

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midsummer." † * * * [From Chelmsford on the Circuit.] "We had very little to do at Hertford; we hanged more than we tried causes." * * * [Addressed to his wife living at Twickenham from a house in the country.] "My mother was to visit Mr. Justice W——'s study to choose some books to read. On his desk, just against him, so that his eyes must frequently direct themselves to it, there is writ this following distich, or couple of verses of his own composing (as he assured my mother over and over),

'In Wisdom's school this maxim I have got
That 'tis much better to be pleas'd than not.'

I tell you the author that I may not arrogate to myself this metrical maxim, which is likely to prove so beneficial to you and all that hear it. Mr. Crawford is another cause of some mirth here; he was asked why he quitted his friends and party; his answer was, that he had read Machiavel, and learned from him he was to own no cause or party longer than they could protect him, and in the present condition of the Whigs, as he no longer had their protection, they must no longer expect his allegiance." ‡

Cowper advised by Lord Somers to go into parliament.

Although Cowper, in his correspondence, speaks so modestly of his own progress, there is no doubt that in a few years after he was called to the bar he was not only the decided leader of the Home Circuit, but that he had extensive practice in Westminster Hall, particularly in the Court of Chancery. There he attracted the notice of Lord Somers, who, appreciating his high qualities for public life, and anticipating the service he might render to the Whig party, strongly advised him to get into the House of Commons. We are now to view him on the political stage.

Oct. 1695.

In the year 1695 the Whigs were rather popular, and William III., on his return from the capture of Namur, having dissolved the parliament, the new elections ran in their favour. Sir William Cowper felt his interest so strong at Hertford, that he started his eldest son as a candidate along with himself, and, after a sharp contest, they were both returned. On this

† 24th March, 1696. ‡ 18th Sept. 1701.

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occasion they were warmly supported by the Quakers, and particularly by an eminent maltster of that persuasion of the name of Stout, the melancholy fate of whose daughter afterwards caused such a public sensation, and was so perilous to the family of Cowper.

He is returned for Hertford along with his father.

The younger Cowper, like the younger Pitt, is a rare instance of a member of the House of Commons being considered from his maiden speech a consummate debater, and ever afterwards maintaining his reputation. Yet, while we are told that "the very day he took his seat he had occasion to speak three times, which he did each time with great applause," we are not even informed of the subject that was discussed; and although, when appointed Lord Keeper, in 1705, it was said that "he had for many years been considered as the man that spoke the best of any in the House of Commons*," there is scarcely a fragment remaining of any speech delivered by him in that assembly. It might have been expected that, after popular government had been established in this country by the Revolution of 1688, great publicity would have been given to the proceedings of the two Houses; but, in truth, the prohibition against printing the speeches of members was much more rigorously enforced than it had ever before been†; and the practice being discontinued, which prevailed at an early time, of entering on the Journals the substance of what was said on both sides of a question, we are less acquainted with parliamentary eloquence under William III. and Queen Anne than in the reigns of some of the Plantagenets; and we learn only from personal anecdotes and tradition that St. John was the greatest orator who had appeared in England.‡

His great success as a debater.

* Burnet, O. T. iv. 122.

† We consider the lists of the divisions so essential to inform the constituent bodies how their representatives are conducting themselves, that they are printed and circulated authoritatively by order of the House of Commons; but in the year 1696 the printing and circulating the names of a minority in the House of Commons was unanimously voted "a breach of privilege, and destructive of the freedom and liberties of parliament." — *Com. Journ.* xi. 572. So in 1699 the Lords made a new standing order, which has not been repealed, against "publishing any thing relating to the proceedings of this House." — *Die Lunæ, 27th Februarii*, 1698.

‡ While we have some shreds of Cowper's parliamentary eloquence, and some of his forensic efforts are well preserved, St. John, though a finer speaker, has

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Cowper, like other lawyers who have followed him, seems to have rendered himself particularly obnoxious in the House of Commons to the "Squirearchy." "Mr. Cowper," says Vernon, "has provoked the country gentlemen by saying that 'an active, industrious man who employed 5000*l.* in trade was every whit as fit to be a member there as a country gentleman of 200*l.* a year, who spent all his time in hawking and hunting, and was over head and ears in debt.' My Lord Norreys answered, that 'he was one of those country gentlemen, and thought himself as fit to sit there as those who were used to take money for their opinion.'" At this time the Court was strongly opposed by the landed aristocracy, and relied chiefly on the monied interest.*

He is made King's Counsel.

The honourable and learned member for Hertford, as a reward for his services, was raised to the rank of King's Counsel, then considered a high professional distinction. In consequence, he assisted in the state trials which arose out of the discovery of the Assassination plot.† In Sir William Parkyns's case he replied after Sir John Hawles, the Solicitor General, had made "a sad hash of the evidence," and given the prisoner great hopes of an acquittal, and he put forward the strong points for the prosecution with the utmost clearness, precision, and seeming candour. He admitted that the overt act, in planning the attack upon the King on the road from Kensington to Richmond, could not be relied upon, being proved only by one witness; but he dwelt with much force upon the proofs that the prisoner had invited a French invasion, and he enumerated, with great skill, all the corroborating and aggravating circumstances. Thus he con-

His speech on the trial of Sir William Parkyns.

been more unfortunate, as we can judge of his powers of persuasion from his writings alone. Mr. Pitt thought that one of his speeches would be a more valuable discovery than any of the lost works of the ancients.

* Vernon's Letters. The "Members' Qualification Bill" passed the Commons, but was thrown out by the Lords, and did not become law till the next reign.

† The assassination was to have taken place on a Saturday when the King was to go a hunting, and the hunting party being deferred on account of some discoveries which had been made in the design, was renewed for the following Saturday.

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cluded:—"The prisoner at last makes an appeal to your compassion, and speaks of his education in the profession of the gown, of his infirmities, his age, and his family. I am very unfit to observe on such topics, and I should be very unwilling to extinguish in your minds the feelings which they are calculated to excite; but I must remind you, gentlemen, that he should have had some pity on the country when he planned the confusion and desolation which would have followed from the landing of a French army on our shores, and that he should have felt some pity for the Prince now on the throne, who has saved our religion and our liberties,—whom the prisoner and his associates, after they had once been disappointed in an attempt upon his life, a second time remorselessly doomed to destruction.* Though these considerations may not quite remove all compassion, yet they may serve to confirm you in a resolution of doing justice to the King, the kingdom, and yourselves; and that is all we ask of you."† The prisoner was found guilty and executed.‡

A.D. 1696
He supports the Bill for the attainder of Sir John Fenwick.

Cowper's next public appearance was not quite unexceptionable. The principal conspirator was Sir John Fenwick, and it had been intended to arraign him at the Old Bailey, along with the others; but he contrived, under various pretences, to have his trial postponed, and in the meanwhile to send out of the country one of the two witnesses who were to prove the overt acts of his guilt. If ever a bill of attainder could be justified, it would be under such circumstances; but to legislate capitally and retrospectively against an individual, must ever be an abuse of the supreme power of the state, and if crimes cannot be punished judicially by the established tribunals of the country, it is better that they should go unpunished than that a precedent should be set which may be applied to the shedding of innocent blood.

* 12 St. Tr. 1446.; 13 St. Tr. 1.

† 14 St. Tr. 125.

‡ There was abundant evidence to support the conviction for high treason; and there can be no doubt that the prisoner was concerned in the assassination plot. Although he, and Sir John Friend, who suffered along with him, would express no repentance, they were solemnly absolved from all their sins by three nonjuring clergymen. Cowper was afterwards counsel in a prosecution against the clergymen for this outrage; but the report does not show what part he took in it.—14 St. Tr. 406.

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We are, indeed, amazed to see that a mode of proceeding, invented in the arbitrary reign of Henry VIII., and then thought violent and unconstitutional, should have been adopted after the "Bill of Rights" had passed under the auspices of Somers, and that, to please William III., it should have been eagerly supported by Cowper and by Bishop Burnet. The Bill for the attainder of Sir John Fenwick being introduced into the House of Commons, the Tory lawyers made a noble stand against it.* The Attorney and Solicitor General being very indifferent spokesmen, the defence of the measure fell chiefly upon Cowper, and we have some account of what he urged on the occasion. He began by alluding to the delicacy of his situation in mixing the functions of counsel for the Crown and member of parliament. "Sir, being concerned in prosecutions without doors arising out of this transaction, although I had not been professionally consulted respecting the case of Sir John Fenwick, I have hitherto abstained from taking any part in the debates upon the bill for attainting him; but before giving my voice upon it as a Judge, I feel bound to state the grounds on which I have come to the conclusion that it ought to pass. Consider his crime and his subsequent conduct. His crime, as proved against him at your bar is the reason why I think before God and man, I ought to give my affirmation to this bill by which you sentence him to die. What he hath done in protracting his trial, and spiriting away the witness, convinces me that we are in a proper method of proceeding against him. Let no man say that you have condemned him because he hath protracted his trial. No: you have condemned him for having been guilty of high treason, manifestly proved against him. Then they ask, '*Will you condemn any man that is at any time guilty of high treason?*' No: only when a man having been guilty of the worst of treasons, which would have been clearly proved against him in the ordinary course of law, undertaking to atone for his crime by making discoveries important to the public safety, protracts his trial till the chief witness against him is gone, and then sets the jus-

* See in particular the admirable speech of Mr. Harcourt, afterwards Lord Chancellor, *post*.

tice of the country at defiance. Gentlemen are afraid that this will be made use of by posterity to the disadvantage of honest men. Must not the guilty be punished because the same methods may be perverted to the ruin of the innocent? By this very precedent the innocent may be protected. If in future times an attempt should be made to condemn a man in parliament without hearing him and without proof, he may say, 'Sir John Fenwick was heard personally and by his counsel; evidence was produced before him and confronted with him; his case was a most extraordinary one and required an extraordinary remedy; he would have introduced a foreign army into the heart of the kingdom, and lifted his hand against the sacred life of the King.'"—He then very sophistically attempts to answer the argument that the evidence was insufficient to support the bill, there not being two witnesses to the overt act, by contending that the statutes 1 Edward VI. and 5 Edward VI., requiring two witnesses, are only binding on the inferior courts, and do not apply to a bill of attainder. Having next struggled for the doctrine that in legislating they were to be governed, not by technical rules, but by the dictates of conscience,— contrary to his usual tact he seems rather to have shocked the House by trying to induce them to pass the bill under the pretence that it might be hung over Sir John Fenwick *in terrorem*, to induce him to make the discoveries which he had often promised but always withheld: "I am satisfied he hath not made that atonement to his injured country which we have a right to expect from him. I am persuaded that unless this bill proceed steadily against him, you will have none of that discovery——" [Here, says the report, he was interrupted by the noise of some gentlemen showing dissatisfaction at that way of arguing]—"Do not let gentlemen pervert this argument and say, '*will you hang a man if he do not confess?*' No! but when I have heard proof that he is guilty of the worst of treasons, and hath aggravated his crime by his subterfuges to elude justice, he deserves to die,—unless he will merit his life by a discovery of what he knows. I think it of the highest importance that you should be able to trace the other branch of

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this conspiracy — the meeting of the French King's forces in England. I think you are in the proper method, and this bill may have a better issue than his death; but if not, he will only pay the debt which he owes to the justice of his country."* The bill passed the Commons only by a majority of 33, — 189 to 136, and the Lords by a majority of 6, — 66 to 60. Nevertheless it received the royal assent, and Sir John Fenwick was beheaded on Tower Hill.† This proceeding, however irregular it may appear to us, was not much condemned at the time, except by the violent Jacobites, who considered him a martyr; and Cowper, by the share he had in it, rather increased his reputation.

Jan. 28. 1697.

Trial of Lord Mohun.

During the trial of Lord Mohun before the Lord High Steward for the murder of Richard Coote, which took place soon after, we have a remarkable proof of the opinion entertained of Mr. Cowper's elocution: — "Mr. Solicitor General (Sir John Hawles) began to sum up the evidence for the King, but his voice was so low and the noise in the hall was so great that he could not be heard. *Lord High Steward.* — 'Mr. Solicitor, pray raise your voice that all my noble Lords may hear you.' Several Lords then moved that one who had a better voice might sum up — *and particularly* Mr. COWPER; but it being usually the part of the Solicitor General to reply, and he only having prepared himself, he was ordered to go on."‡ The peers condemned to have their ears tortured as by the sharpening of a saw, took compassion on the noble prisoner whose head was in jeopardy, and unanimously acquitted him.

Charge of murder against Spencer Cowper.

Cowper, now an universal favourite, was on the highway to preferment, when an occurrence arose which threw him and his family into the greatest alarm, and threatened to cover with disgrace a name hitherto held in respect. He had a younger brother, Spencer Cowper, to whom he was fondly attached, who had been at school with him, who being called to the bar, went the Home circuit with him, occupying

* 5 Parl. Hist. 1007. 1141.

† See Burnet, iv. 204—266. It is very amusing to see how the good Bishop persuaded himself that it was his duty to interfere in this affair of blood.

‡ 13 St. Tr. 1055.

the same lodgings at every assize town, and who spent his vacations in the neighbourhood of Hertford, showing, for the sake of the family interest in that borough, very marked attention to the electors, and their wives and daughters. A charge was brought against this brother that he was guilty of a foul murder, and there ran such a strong popular prejudice against him, that he was in great danger of an ignominious end.

History of Sarah Stout.

Mr. Stout, the Quaker, had died since the last election, leaving his widow and an only child, an unmarried daughter, named Sarah, in affluent circumstances. The Cowpers still kindly took great notice of them, visited them at Hertford, and invited them to the house of Sir William, in Hatton Garden. Spencer Cowper had been particularly serviceable to Mrs. Sarah (as she was called) in managing her pecuniary affairs, and although she was a very handsome young Quakeress, and rather of a romantic turn, it seems now quite certain that he had never made her any improper overtures, or at all encouraged a fatal passion which she cherished for him.

Her dead body found in the water.

It so happened that early in the morning of Tuesday, the 14th of March, 1699, the day after the commencement of the Spring Assizes at Hertford, the body of this unfortunate girl was found drowned in the Priory River, which flows through that town, and Mr. Spencer Cowper was certainly the last person who had been seen in her company the night before. Suspicion immediately fell upon him; but he appeared as a witness before the coroner's jury, and so far cleared himself that they brought in a verdict that "she had drowned herself, being *non compos mentis*." William Cowper (as we shall see) had been luckily detained in London by business in the House of Commons, or he might have been afterwards charged as an accomplice. Spencer proceeded with the Judges and the other counsel to Chelmsford and finished the circuit, lamenting the fate of Sarah Stout, but without any dread of being further questioned respecting her death.

Verdict of "lunacy" by coroner's jury.

Spencer Cowper suspected of having murdered her.

In the meantime, two parties were at work, from very opposite motives, planning measures which nearly brought him to the gibbet. An unfounded rumour was spread that

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she was pregnant, and that she had made away with herself to conceal her shame. The Quakers, with Mead at their head, thought that such an imputation brought disgrace upon the whole of their society, and had the body disinterred to be examined by surgeons after it had been some weeks in the grave. It was proved that she had died a virgin. Her friends would no longer allow that she had drowned herself, but insisted that she had been murdered by Mr. Spencer Cowper, and that he had thrown the dead body into the mill stream. The charge was now most eagerly seized by the political opponents of the Cowpers, who easily persuaded themselves of its truth, and who considered it the certain means of extinguishing the Whig interest in the borough.

His accomplices.

The excitement was greatly increased by a statement that on the night of the supposed murder, two attorneys and a scrivener from London, shutting themselves up together in a room at Hertford, had exhibited appearances in their dress, and had used expressions, which clearly proved that they were accomplices.

He is committed to prison.

An information was laid against all the four before Lord Chief Justice Holt *, and they were committed to prison. Upon an application to the Court of King's Bench, the supposed accomplices were admitted to bail; but the Judges being equally divided on Spencer Cowper's case, he was remanded, and he remained in close custody till the summer assizes.

His trial at Hertford before Baron Hatsel.

The trial took place at Hertford, on the 16th of July, 1699, before Mr. Baron Hatsel, a very well meaning, but very weak Judge, who seems to have been strongly imbued with the vulgar prejudices which existed against all the prisoners.

Case for the prosecution.

The case against Spencer Cowper was thus shaped, — that Sarah Stout must have been murdered by some one before her body was thrown into the water, — because it was discovered floating on the surface, which was impossible if she had drowned herself, — and that under the circumstances he alone could have done the deed. The first proposition was

* Down to this time the Chief Justice of England, on great occasions, still acted as a magistrate in committing criminals for trial, and even in quelling riots.

negatived even by the witnesses for the prosecution. Beyond the objection to the theory propounded respecting the floating and sinking of dead bodies, the corpse of Sarah Stout was found under the water supported by stakes in a mill race, there being nothing visible on the surface except a part of her petticoat. But a servant maid of Mrs. Stout created a very strong impression against the young barrister, by swearing "that on Monday, the 13th of March, the first day of the Spring Assizes, he alighted from his horse at the house, and dined there; that a bed-room was prepared for him; that having gone out, he returned to supper; that in his hearing she was ordered to go up stairs to warm his bed; that when she went to do this she left him and Mrs. Sarah in the parlour together, Mrs. Stout having before retired to rest; that while she was warming the bed, about a quarter before eleven at night, she heard the slamming of the outer door; that when she came down Mr. Cowper and Mrs. Sarah were gone; that she and Mrs. Stout remained up for them all night, believing that they had walked out together, but did not alarm the neighbourhood for the sake of the young lady's reputation; and that their suspense was at last terminated in the morning, by the news of the body being found in the river, about half a mile from the house." By other witnesses it was proved that the three accomplices had been together in a room at Hertford soon after eleven, one of them being wet, and in a great perspiration; that they had talked much of Mrs. Sarah Stout, saying, "that she had behaved ill to a lover, but that her courting days were now over," and that a piece of rope and a bundle were found in a closet belonging to the room they had occupied.

The defence.

Spencer Cowper not being allowed the assistance of counsel defended himself with great firmness and presence of mind, and by his cross-examination of the witnesses showed the fallacy of a great part of the case for the crown. When he came to address the jury, he pointed out how the prosecution had arisen from the zeal of the Quakers to maintain the reputation of their sect, and from the feuds occasioned by the election of his father and brother for the borough of Hert-

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ford. He then proceeded to explain the circumstances employed to raise a suspicion against him — which he protested that, out of tenderness to the memory of the deceased, he would not have done had it not been to rescue from danger the three innocent men who were on their trial along with him. He detailed the following facts, which were satisfactorily proved by the evidence of his brother William, afterwards Lord Chancellor, Mrs. Cowper, the Chancellor's first wife, and other witnesses of undoubted credit: that the fair Quakeress, although he was a married man, had conceived an uncontrollable passion for him, which he in vain had attempted to repress; that when in London she wrote to him "she was coming to visit him at his chambers in the Temple;" that he communicated this assignation in confidence to his brother, and they agreed that as she was to dine that day with their father, in Hatton Garden, William should say, as if casually, in her hearing, "Spencer was gone into the country on business;" that this scheme of inducing her not to go to the Temple was carried into effect; that she had solicited him to lodge at her mother's house during the assizes in the spring of this year, which he declined, as he was to occupy lodgings at a Mr. Barefoot's, in the Market Place, which were usually kept for his brother, who was detained in London by parliamentary business; that on the 5th of March she wrote to him, saying, "I am glad you have not quite forgot there is such a person as I in being; but I am willing to shut my eyes and not see any thing that looks like unkindness in you, and rather content myself with what excuses you are pleased to make, than be inquisitive into what I must not know: I am sure the winter has been too unpleasant for me to desire the continuance of it; and I wish you were to endure the sharpness of it but for one hour, as I have done for many long nights and days; and then I believe it would move that rocky heart of yours that can be so thoughtless of me as you are: When you come to H—d, pray let your steed guide you, and do not do as you did the last time; and be sure order your affairs to be here as soon as you can, which cannot be sooner than you will be heartily welcome;" — that on the 9th of March she wrote him another letter,

in which she plainly proposed that they should live together, adding this expression, "for come life, come death, I am resolved never to desert you; therefore, according to your appointment, I will expect you;" that from the rebuffs she met with she had fallen into a melancholy, and had several times threatened to destroy herself; that on the Monday in question he took possession of his lodgings at Barefoot's, and was to sleep there, but that to sooth her he went to her mother's house, and was prevailed upon to stop to dinner, and to promise to call again at night; that he did call, but refused supper, and that the maid, in his hearing, being ordered to warm his bed (as she had truly sworn), did leave the room for that purpose, he then making no objection to the proposal. He abstained from stating the conversation which then passed between him and the young lady, there being no third person present, but he gave the Judge and jury to understand that, for the sake of her character, having remained silent in the presence of the maid, — as soon as they were alone together he positively refused to sleep there, and he immediately left the house. He proved, in the clearest manner, that before the clock struck eleven he had returned to his lodgings at Barefoot's, and that he never went out again till next morning — after news of the catastrophe which had happened had been spread over the town. Mr. and Mrs. Wm. Cowper, when examined, particularly spoke to Mrs. Sarah's frequent fits of despondency, her repeated expressions of her wish to be rid of life, and of prognostications she had uttered of her approaching death.

The accomplices.

With respect to the two attorneys, it was proved that, coming to attend the assizes, they had taken a room jointly, meaning, after the fashion of the age, to sleep together; and that the scrivener, a particular friend of theirs, arriving late at night, after galloping the greater part of the way from London in a heavy rain, and not being able to find a lodging, they had invited him to take a part of their bed. Before going to rest, for the refreshment of the scrivener they sent out to a tavern for some wine, which they called upon their landlord to partake of; and as the glass went round, they talked merrily of the Quaker beauty, well known in

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those parts, who was supposed to have jilted a friend of theirs, of the name of Marshal, and whose coquetries they predicted would soon come to an end, as she had reached her twenty-fifth year, and "her courting days were nearly over."

Summing up of the Judge.

In modern times, at the close of such a case, the Judge would interpose and direct an acquittal, and the counsel for the prosecution would readily concur in this course; but Mr. Jones, the counsel who conducted this prosecution, having made several speeches very irregularly during the trial, still pressed for a conviction of all the four, and Mr. Baron Hatsel put their lives in jeopardy. After a most imperfect sketch of the evidence about finding the body, he says, "You have heard also what the Doctors and Surgeons said on the one side and the other concerning the swimming and sinking of dead bodies in the water, but I can find no certainty in it, and I leave it in your consideration.* Gentlemen, I was very much puzzled in my thoughts, and was at a loss to find out what inducement there could be to draw in Mr. Cowper, or those three other gentlemen, to commit such a horrid barbarous murder. And, on the other hand, I could not imagine what there should be to induce this gentlewoman, a person of a plentiful fortune and a very sober good reputation, to destroy herself. Now, gentlemen, I must confess, the evidence the defendants have given by these letters, if you believe them to be this gentlewoman's handwriting, do seem to fortify all that Mr. Cowper's witnesses have said concerning her being melancholy: It might be a love distraction, and she might have been a virtuous woman for all that; for it might be a distemper which came upon her and turned her brains, and discomposed her mind; and then no wonder at her writing thus, in a manner different from the rest of the actions of her life. Gentlemen, you are to consider and weigh the evidence, and I will not trouble

* Medical jurisprudence, still imperfectly cultivated in this country, seems then to have been at a very low ebb. A doctor, on this trial, being checked by Baron Hatsel, when about to quote the opinions of Galen and Hippocrates upon death by drowning, said: "I see not, my Lord, why I should not quote the fathers of my profession, as well as you gentlemen of the long robe quote Coke upon Littleton in yours."

you any more about that matter. As to these three other gentlemen, that came to this town at the time of the last assizes, what there is against them you have heard: They talked at their lodgings at a strange rate concerning this Mrs. Sarah Stout. What you can make of it, that I must leave to you; but they were very strange expressions, and you are to judge whether they were spoken in jest or in earnest. There was a cord found in the room, and a bundle seen there, but I know not what to make of it. As to Mrs. Sarah, there was no sign of any circle about her neck, which, *as they say*, must have been if she had been strangled. Truly, gentlemen, these three men, by their talking, have given great cause of suspicion; but whether they and Mr. Cowper are guilty or no, that you are to determine. I am sensible I have omitted many things, but I am a little faint, and cannot repeat any more of the evidence."—*Foreman of the Jury.* "We have taken notes, my Lord."—*Baron Hatsel.* "Well, then, gentlemen, go together and consider the evidence, and I pray God direct you in giving your verdict."

Verdict.

The Jury deliberated as much as half an hour, and then delivered a verdict of *Not Guilty* as to all the prisoners. William Cowper and the rest of the family were in an agony of suspense, but when the Jury came back into Court and Spencer was desired to hold up his hand, he did so with the utmost composure while uncertain as to his doom.*

"Appeal of murder."

The verdict was unquestionably just, but fanaticism and faction are blind, and an attempt was made to bring all the four again to trial, by the process called "an Appeal of Murder"† sued out in the name of the heir at law of Sarah Stout.‡

* He resumed his practice at the bar — afterwards sat in the House of Commons as member for Berealstone, was made a Judge of the Court of Common Pleas, and presided on many trials for murder — ever cautious and mercifully inclined — remembering the great peril which he himself had undergone. He was buried in the church of Hertingfordbury, where a splendid monument is erected to his memory, while there is no stone to commemorate the Chancellor, although he lies close by.

† This mode of proceeding was only abolished in the reign of George IV. It was generally considered odious as a species of private revenge, depriving the Crown of the power to pardon; but Lord Holt declared it to be "a noble badge of the liberties of an Englishman."

‡ 13 St. Tr. 1190—1250.; Lord Raymond, 560.; 12 Mod. 372.

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A. D. 1699. Proceedings quashed.

There were various hearings on the subject, before Lord Keeper Wright, who called to his assistance the Master of the Rolls, Lord Chief Justice Treby, Lord Chief Baron Ward, and Mr. Justice Powell. William Cowper attended as counsel for his brother, and argued the case for him with great talent, his energy being stimulated not subdued by the anxiety which he felt.* No misgiving was ever felt by him for a moment respecting Spencer's innocence, but considering the perverted and infuriated state of the public mind, it was of the highest importance that the risk of a mistaken verdict should not be again run. Upon a capital conviction in this form of proceeding, the Crown had no power to pardon. On account of an informality, the first appeal was quashed, and the Lord Keeper, with the unanimous concurrence of his assessors, refused to issue a writ for another.

All unprejudiced persons, and even many violent political opponents, allowed the acquittal to have been honourable.†

* I have now lying before me two long "playdoyers," which he used on those occasions — one entitled "Notes and Authority's preparatory to my argument against a new writ in my brother's case, and as the counsel's instructions." The other, "Argument for my brother Spencer, at Lord Keeper Wright's chamber in the Inner Temple, May 27. 1700." — They display vast research and acuteness.

† The malevolent turn given to the affair by Mrs. Manley in the "New Atalantis" in her story of "Mosco and Zara," was that Spencer Cowper had yielded to her solicitations; that, having grown tired of her, he wished to shake her off; that on the night in question, when she wished that they should retire together to the chamber prepared for him in her mother's house, he prevailed upon her to take a walk with him by the river side; that he then refused to agree to her scheme of abandoning his wife for her; and that having actually run off from her, she, in despair, threw herself into the water. This last scene will show what faith is to be given to the narrations of Mrs. Manley: "*Zara speaks*: 'I have told my mother of my design to take you for a husband: my despair and melancholy has drawn her at length to consent. Do but utterly forego that woman you call your wife, and we require no more for making mine (in our opinion) a lawful marriage. We are above the little censure of others; the law nor magistrates do not frighten us. I make you absolute master of my fortune, only upon these conditions — My Dear! why do you not speak? Thou art not come here to disappoint me.'—'Alas! beautiful *Zara*, what can I answer? You don't know the world; you are ignorant of mankind. 'Tis in our power to marry ourselves but once as long as that wife shall live. I said the contrary, only to leave your virtue that pretence for yielding: but we must both be utterly void of common sense to pass such a marriage upon the world. No wise woman reckons on the performance of those extravagant things that are said to gain her. Be content with my love; there's nothing I shall omit to please you; I will lose no opportunity to entertain you with my passion, provided you are discreet, and do not expose us both.' He was going on when *Zara*, not able to hear any more, sunk upon her knees, and catching hold of his coat with both her hands, interrupted him thus: 'Kill me upon the instant; I

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A. D. 1701. Hertford lost to the Cowpers.

The prosecution, however, had the desired effect of subverting the Cowper interest in Hertford. At the next general election, it was manifest that no one bearing that name had the slightest chance of being returned for that borough. Sir William for ever retired from parliament.

Lord Somers tries to get W. Cowper returned to parliament through the interest of the Duke of Bolton.

Fortunately Lord Somers took compassion on young William, and recommended him to the Duke of Bolton, a great Whig borough proprietor. In consequence, his Grace, in a manner rather more open than was practised when the system of Peers interfering at elections was better established, wrote a letter to the Mayor of Totness, to be communicated to the burgesses, recommending Councillor Cowper as a fit and proper person to represent them; but the Mayor, from mistake or treachery, held back the recommendation, and allowed Mr. Gwynne, the candidate favoured by the Seymour family, to get an advantage which could not be

have something more than the pains of death upon me. Words cannot express them! O, if ever you intend to meet mercy (as certainly you'll one day stand in need of it), have mercy upon me, a creature undone by love, agonised by passion, tortured by despair! Kill me, or comply with my request. I shall never live, I cannot live to see another day. Pity me; pity the lost, the expiring *Zara; Zara*, who adores you; *Zara*, enchanted by your powerful magic; *Zara*, that even now dies, and can live no more without some returning kindness.' Here her sobs choaked her words. He striving to get loose from her, she grasping to retain him; he saw he could not bring her to reason, and, therefore, since they must quarrel, the breach had best be made in the open fields, where nobody could hear them. He would take the pretence, and break from her, never to be plagued with her importunity again. 'You would do well, madam,' says he, aiming to unlock her hands, 'to leave me in peace, and go home to compose your brain by sleep. You happen to be amorous, and fantastically mad, and I must be the sufferer. Are you the first woman who has gone upon a wrong principle? Thy family and reputation are not to be staked for trifles. Be more moderate, or assure yourself I'll never, from this instant, see you more.' Here he threw abroad her hands, and broke from her. She fell her length upon the ground; then getting up as fast as she could, strove to follow him, but he was at too great a distance. Revenge and despair worked her up to the height of lunacy: she tore off her hood, her coif, her gown that hung loosely about her, trampling it under foot, and calling after him, 'Turn, turn but a moment; turn,' she cried, 'and see what love and rage can do; return, and see what *Zara* can perform. Ruin — despair — destruction — death — eternal misery overtake me! Heaven, earth, and hell, revenge my wrongs! I devote myself to eternal misery, in view of returning in the most affrighting form to haunt this barbarian. Let me mingle among all the traitor's pleasures; let him attain to no honours but what may be blasted by the remembrance of *Zara*. Receive me, O hospitable flood, into thy cold bosom; receive a devoted wretch, whose flame thy waters only can quench.' Here she flounced with all her strength into the river; to the last moment persisting in a desire of speedy death."—*New Atalantis*, i. 221. Refutation and comment would be ridiculous; but it is curious to see what gave such delight in the reign of Queen Anne: and what, though disbelieved, was read by all.

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A.D. 1701.

Electioneering at Totness.

retrieved. At last, the Mayor having published the recommendation of Cowper, the Bolton party in the Borough wrote this despatch to the Duke: "Totness, Dec. 24. 1700. May it please your Grace — We humbly beg pardon for not giving an answer sooner to your obliging letter, which was indeed communicated to some of us by our Mayor the day he received it, but he deferred calling a Hall to impart its contents to our burgesses and freemen till this day, when we perceived by them that they were most of them engaged by the interest of Sir E. Seymour for Mr. Gwynne. But what did most surprise us was his showing us a copy, which he had written, he said, to your Grace in his own name, without our knowledge, wherein he intimated that we were not now in a capacity to serve you as you desired. Indeed, the difficulties by his delays are now very great, but not, as we hope, insurmountable; and you recommending to us such a person as is well qualified for such a trust, and consistent with your honour and our reputation, we hope we shall be able to give you a good account of our proceedings at our next election, and that we are really,

"May it please your Grace,

"Your most humble and obedient Servants,"

&c. &c.

The Duke forwarded this document in the enclosed letter to Mr. Cowper.

"Sir,

"I enclose you a letter I received yesterday from Totness, by which you will see that the Mayor not communicating the contents of my letter in due time to the burgesses and freemen has occasioned a greater difficulty than I could have imagined; but you will see they are in hopes to give me a good account of their proceedings at their next election, and therefore I think it absolutely necessary that you, immediately upon receipt of this, go down post, for your presence there would be of great service. I sent my secretary post thither on Tuesday last, upon some letters I received from thence; he is upon the place, and will be

assistant to you. I am in so great a hurry that you will, I hope, excuse my making use of another hand than that of

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"Sir,
"Your very humble Servant,
"BOLTON."

Cowper immediately returned the following answer:—

"I received, last night, your Grace's letter with that from Totness enclosed. The first time I knew of your favourable intentions towards me, which, however ineffectual they may prove by the practice of the Mayor, (who, 'tis plain, hath endeavoured, by better advice than his own, to avoid as civilly as he could the authority your Grace's letter would otherwise have had in his Corporation,) will always be valued by me as an evidence of your good opinion, and acknowledged to the best of my power. I had immediately obeyed your Grace in going post to Totness, if want of exercise * had not made it impossible for me to perform such a journey in that manner, though I fear my presence there would add nothing to what your power and interest has done for me in that place, especially being hindered by the Act of Parliament from using the only means a stranger can on a sudden recommend himself by. What I can think of to contribute on my part, is to empower your Grace's secretary, if he sees it useful, and can do it so as not to let the other side prove it upon him, insinuate to some one that he can trust that he may disperse it to the rest, that 'I will be a benefactor to the town as soon as I safely may,' and if we succeed, your Grace may rely on me for making good your servant's promise to your satisfaction, who, by your Grace's unmerited goodness to me, will in that, and in every thing else, have a right to command,

Mode of bribing a borough in the reign of Wm. III.

"Your Grace's most faithful and
"Most obedient Servant,
"W. COWPER."

Had the prospect been more encouraging, "want of ex-

* This copy I have taken from the draught of the letter, in which, for "want of exercise," the words were originally "my way of life."

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A. D. 1701.

ercise" would not have prevented the young lawyer, accustomed to ride the circuit, from speedily setting off "post" for Totness.* His subsequent observations clearly show, that the act lately passed against treating and bribery† had only introduced a little more care to preserve secrecy, and that detection being avoided, to corrupt a borough was not then considered disreputable.

It would appear from the following letter, that the Duke of Bolton, hurt that Cowper, who was to be his candidate, declined to present himself immediately to the electors of Totness, had applied to Lord Somers to engage him in the contest, but that the attempt was vain.

"My Lord Duke,

"My Lord Somers having favoured me with an account of what your Grace has done for me since I had the honour of your last letter, and that 'tis thought my being at Totness might be of some use there; I could not but lay hold of this opportunity of writing by your Grace's servant, as well to assure you that although I must for ever acknowledge by what hand your favour is derived to me, I mean that of my Lord Somers, yet I shall never suffer any consideration whatsoever to lessen that sense I have of your great goodness to me in taking care of my concerns to a degree, I am not capable of doing it for myself: as likewise to confess how much I am ashamed, that when I understand so much hardship is undergone by others for me, I should not be able to set a helping hand in that part which is at present expected from me. I have but one short and true apology, that I am sorry how my state of health renders it at this season absolutely impossible for me, which I beg your Grace's belief of; since nothing else could in the least excuse me, and that only is the real excuse why I did not set out on the first intimation I had of your Grace's opinion in that particular.

"I am, &c.

"W. Cowper."

* Of course the reader is aware, that travelling post at that time meant *riding on horseback*, all persons attempting to travel in carriages going slowly with their own horses, and post horses to draw carriages not being kept till half a century after.

† 7 & 8 W. 3. c. 4.

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A.D. 1702.

He took refuge in Berealstone, which was entirely close, and was one of a class of boroughs so convenient and useful that we cannot help sometimes regretting the scandal which rendered their abolition necessary; for I fear we cannot deny that they sent to parliament members more eloquent and better qualified to serve the state than the new boroughs with larger constituencies which have been substituted for them. Cowper continued to sit for the same place, while he was the leader of the Whig party in the House of Commons, till he accepted the Great Seal.*

Cowper is returned for Berealstone.

Though for a time deeply grieved by the loss of Hertford, he was now in high spirits on account of the reaction in favour of the Whigs, caused by Louis XIV.'s foolish recognition of the pretended Prince of Wales as King of Great Britain, confidently expecting to see his patron, Lord Somers, forthwith holding the Great Seal, and his own speedy advancement to the office of Attorney or Solicitor General. But his prospects seemed for ever blighted on the accession of Queen Anne, when there was at first such a proscription of the Whigs that Lord Somers's name was struck out of the list of the Privy Council, and out of the Commissioners of the Peace all over England. Cowper was even apprehensive that his silk gown would be taken from him; — and of six Whig King's counsel, four who had given particular offence to the high-church party were actually cashiered. However, his patent was renewed — perhaps, upon the consideration that with a stuff gown, and standing without the bar, he would have maintained his professional ascendency.

Hopes of the Whigs disappointed by the death of King William III.

In the new reign, as a politician he followed the magnanimous example set him by his chief, — supporting ministers when they adopted the measures of their predecessors, and mitigating as far as he could the bad consequences of the illiberal domestic policy to which they for some time adhered. On the assembling of Anne's first parliament, the ghost of Sarah Stout was still supposed to haunt the streets of Hertford at midnight, on its way to the mill race,— and he was again obliged to fly to Berealstone.†

Cowper's conduct in parliament at the commencement of the reign of Anne.

Oct. 1702.

* Gwynne was returned for Totness on the Seymour interest.

† 6 Parl. Hist. 42.

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His speeches in the House of Commons.

Although we know that he continued a frequent debater, and that as leader of the small Whig minority in the House of Commons he strenuously supported the war with France, and opposed the bills against "occasional conformity," there is no shred preserved of any other speech he ever made while he remained a member of the House of Commons, except in the great privilege case of *Ashby* v. *White*. He had tried to resist the infamous party decisions on election petitions out of which the controversy arose; and when the obnoxious judgment of the Lords came to be discussed, while he allowed that the Commons must themselves decide upon the returns of members, he insisted that it would be no violation of their rights to allow an elector whose vote was maliciously refused to maintain an action against the returning officer, and that the House of Lords was fully justified in deciding that such an action might be maintained. He contended that the elective franchise vested in an individual was a privilege; that the wilful violation of it was a private wrong, working a loss to the party injured, and that there being "*injuria cum damno*," it would be contrary to all principle, and a reproach to the jurisprudence of the country if a remedy by action were not afforded. The House of Commons might rectify the return, and punish the returning officer for his offence against the public, but could give no compensation to the injured elector. He illustrated his position happily by the case of a battery, for which not only the wrong-doer may be punished by indictment, but for which a reparation in damages is given by civil action. He ridiculed the quibble, that by the ancient theory of the constitution, the obligation to return members to parliament was considered a burden, when in reality the legitimate possession of power to interpose in the making of laws and in the government of the country was a noble distinction,— and as a vote for members of parliament was a right on which a high value was placed, he who was wrongfully deprived of it ought to have legal redress, in the same manner as for an injury to his person or his property. As for the argument that the Lords were deciding on the privileges of the Commons, he said, "The Lords have not judged the fact; they are bound as to the fact by the verdict, and they are unquestionably the judges

Just view taken by him of "privilege" in the Aylesbury case.

of the law on a writ of error. And, therefore, as to what has been said that any fact of an election might come to be determined before the Lords, it is a great mistake, for they judge purely of the law on writs of error, as every one knows who knows any thing of our constitution. I fear we are taking from the subject in effect what the law hath adjudged his right, and we are seeking to reverse a legal judgment given in the subject's favour. Upon the whole, I am for so much of your resolution as serves only to declare that you have the sole power of determining the rights of all elections, and even the elector's right to vote, to the end to try who is your member, or to punish the officer as an offender against the constitution: so far is agreeable to the constant law and practice of parliament. But for that part of the resolution which relates to the restraining the electors from bringing their actions for the personal or private damage done to them, I think it is not agreeable to the constitution of parliament or the law of the land." * He was beaten by a majority of 215 to 97, and a dangerous wound was given to parliamentary privilege by this outrageous abuse of it. † However, he greatly raised his reputation by this effort, and he was soon to be placed in the highest civil station which a subject could enjoy.

His approaching elevation to the woolsack.

* 6 Parl. Hist. 279.

† When arguing for the privileges of the House of Commons in the famous case of *Stockdale* v. *Hansard*, I had more difficulty in dealing with *Ashby* v. *White* than with any authority cited against me. The mere decision of the House of Lords holding the action maintainable amounted to very little, as the resolution of the House of Commons did not in any shape appear upon the record; but it was not easy to contend, that a resolution of the House of Commons respecting their privileges is binding on all other tribunals, when it may be, and has been, carried to such an extravagant pitch. — See *Lord Campbell's Speeches*, p. 136. The Court of law must at least be allowed to judge whether the resolution is on the subject of privilege, so as to be within the peculiar jurisdiction of the House.

## CHAPTER CXIV.

CONTINUATION OF THE LIFE OF LORD COWPER TILL THE ACCESSION OF GEORGE I.

CHAP. CXIV.

Transfer of the Great Seal from Sir Nathan Wright.

THE general election which took place in the summer of 1705, having turned out very favourably for the Whigs, the Earl of Godolphin and the Duchess of Marlborough having softened Anne's prejudices against that party, and all the world having grown sick of Lord Keeper Wright, it became clear that the Great Seal must soon be transferred to other hands. Lord Somers was still so obnoxious to the Queen and to the clergy, that the leaders of the Cabinet had not the courage to propose to make him again Chancellor. Northey, the Attorney General, was considered quite unequal to the post, even if there had been no objection to his politics, and there was a dread of another incompetent appointment after the loud and long-continued complaints against poor Sir Nathan, who was about to be cashiered. Harcourt, the Solicitor General, was a man of great talents, and of high honour; but he was a very strong and consistent Tory, and as it was thought that he would always be true to his party and his principles, his promotion would not have been endured by the rising Whigs. All eyes were turned to Mr. William Cowper, although he had never been a law officer of the Crown. He was by far the most distinguished Whig barrister; he had for some years been regarded as the leader of his party in the House of Commons; and by his agreeable manners, and gentlemanlike bearing, while a zealous politician, he had gained the general good will of his profession, and of public men. There was only one obstacle to his promotion—arising from the rumour to which I have alluded, and which I shall afterwards be under the necessity of considering more minutely—that he had been guilty of bigamy. This charge had been most industriously circulated in society from the time that

he became formidable to the Tories, and had been repeatedly stated in the libellous publications of the day, with many particulars and much declamation; — but although now brought forward against him, the Queen was persuaded by the Duchess of Marlborough, (who, without scandal, was supposed to be much touched by the beauty of his person,) that it was groundless;— and Godolphin, the Treasurer, was authorised to negotiate with him for his promotion to the woolsack.*

Cowper fixed upon for Lord Keeper.

A.D. 1705.

They met by appointment in the morning of Thursday, the 11th of October, at Lord Halifax's.† The Great Seal being now distinctly offered to Cowper, who had been before sounded on the subject, he stipulated that he should have, like his predecessor, 2000*l.* for his equipage or out-fit, and a salary of 4000*l.* a year. ‡ He next demanded what his predecessor had not aspired to — a peerage. There never hitherto had been an instance of making a man, taken from the bar, a peer on his first receiving the Great Seal, and he said he should be contented to receive this distinction at the "next promotion." To this Godolphin immediately assented, observing, that "he should have been created a peer immediately, if there had been any precedent for it." Some accounts say that Cowper likewise wisely bargained for a retiring pension of 2000*l.* a year, as a compensation for the loss of his practice

* "Some former passages of his life were thought to disqualify him for that office by which he was to be the guardian of the Queen's conscience: but these difficulties were easily overcome by the authors of his promotion, who wanted a person that would be subservient to all their designs, wherein they were not disappointed."— SWIFT, *History of four last Years of Queen Anne.*

† I have now the invaluable assistance of Lord Cowper's own DIARY. It begins this very day, and continues pretty regularly till the end of January following. There are a few entries in the beginning of February, 1706, but on the 11th of that month there is this notice between brackets, ["Here I broke off, wanting time, and eyes being sore,"] and there is a hiatus till 23d January, 1709. There is a single entry on that day, and no other is found till 27th August, 1710, about the time when the Whig government was breaking up; and we have this notice, "My great business, and want of health, forced me to interrupt this course in great measure; but I hope, on quitting my office, to be at leisure to resume it, though in matters of less moment." Then follow some very interesting details respecting the change of government, and the attempts to retain him in the office of Chancellor. But the entries are very rare during the remainder of the reign of Queen Anne. On the accession of George I., we have an account of his receiving the Great Seal from that Sovereign; and there, unfortunately, the Diary closes.

‡ At this time, these allowances were paid out of the Civil List, and were still matter of bargain with the sovereign on whom they fell.

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A.D. 1705.

at the bar; but he does not himself mention this in his diary.* At the same meeting the Treasurer showed him a private letter from Queen Anne, in which she intimated that "Rochester and Nottingham had so behaved themselves that it was impossible for her ever to employ them again, and that she looked for support from the Whigs."

Great Seal delivered to him by the Queen.

All preliminaries being settled, they proceeded together in a coach to Kensington. Having arrived there, the Treasurer was admitted into the Queen's closet, while Cowper remained in her chamber. Her Majesty soon came in and said to him, "Mr. Cowper, I am very well satisfied of your fitness for the office of Keeper of the Great Seal, and I am pleased to give it to you." — *Cowper.* "The honour your Majesty is pleased so graciously to bestow upon me, cannot make me more zealous and faithful to your interest than I have always been out of principle, the surest ground to rely on. I am very distrustful that I may not prove equal to so great a post; and all I can promise your Majesty with certainty is, that I will behave myself in it with industry and honesty." He then kissed her hand, and asked and obtained permission from her to go out of town the following day, and to remain in the country till Sunday. He had been advised to do so, that he might avoid as much as possible solicitation for places now in his gift.

Custom for Lord Chancellor or Lord Keeper to accompany the Sovereign to the royal chapel.

When he got home he found a summons from Secretary Hedges to attend a Council at Kensington, at six in the evening. Then and there the Great Seal, which had been in the Queen's own custody since the Saturday preceding, was formally delivered to him, with the title of Lord Keeper.† He took the oath of office, and he was sworn a Privy Council-

* "Oct. 1705. Mr. Cowper made Lord Keeper. Observing how uncertain greate officers are of continuing long in their places, he would not accept it unless 2000*l.* a yeare were given him in reversion when he was put out, in consideration of his losse of practice. His predecessors, how little time soever they had the Seal, usually got 100,000*l.*, and made themselves Barons." — *Evelyn.*

† London Gazette. — "Kensington, Oct. 11. 1705. This day her Majesty in Council was pleased to commit the custody of the Great Seal to the Right Honourable William Cowper, Esq., one of her Majesty's learned Council in the Law, with the title of *Lord Keeper of the Great Seal of England;* and the usual oaths being administered to him, his Lordship took his place at the board accordingly."

lor.* Having disposed of all his places, "reserving nothing to himself, nor taking the value of one farthing reward" (which he seems to have considered a rare merit), he went to his house in Hertfordshire, and remained there till Sunday morning. He then repaired to St. James's Palace, in compliance with the custom still kept up as in the reign of Charles II., that the Keeper of the Great Seal attended the Sovereign to chapel, and fortunately there being now the most perfect purity of manners at Court, there was nothing in this ceremony inconsistent with the character of a grave Judge. † Lord Keeper Cowper having conducted the Queen to her closet, carrying the Great Seal, "took his place in the chapel below; and after sermon, a little before anthem finished, went up to her closet and so returned before her to her lodgings again." ‡ The three following days were occupied in receiving visits. Among those who called to offer their congratulations was Sir Nathan Wright;—"both at first meeting were a little out of countenance." On Thursday, the 18th, he kept his first public Seal in the Middle Temple Hall, and in the evening paid his respects to the Duchess of Marlborough, whom he seems truly to have considered the chief author of his advancement; but she declined all acknowledgment, and "waiving that talk, expressed herself very averse from the High Church party." §

* Each oath cost him 26*l.*

† Ante, Vol. III. p. 321.

‡ Diary, p. 3. This custom evidently originated from the Chancellor having been an ecclesiastic, Confessor to the King, and Warden of the Chapel Royal. It was still preserved with lay Chancellors, and after the Reformation. We have a very graphic description of it from Paul Hentzer, a German, who published Travels in England in the time of Queen Elizabeth. Giving an account of her going to chapel at her palace at Greenwich, he says: "It was Sunday, when there is usually the greatest attendance of nobility In the same hall were the Archbishop of Canterbury, the Bishop of London, a great number of councillors of state, officers of the Crown, and gentlemen who waited the Queen's coming out; which she did from her own apartment, when it was time to go to prayers, attended in the following manner: first went Gentlemen, Barons, Earls, Knights of the Garter, all richly dressed and bareheaded; NEXT CAME THE CHANCELLOR, BEARING THE SEALS IN A RED SILK PURSE, between two; one of which carried the royal sceptre, the other the sword of state, in a red scabbard studded with golden *fleurs de lis*, the point upwards; next came the Queen very majestic, &c." I presume the Sunday procession was laid aside on the accession of the House of Hanover, but it is still preserved when the Queen comes to the House of Lords.

§ At this time, and for some years after, the names of "Whigs and Tories"

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Lord Keeper's visit to Prince George of Denmark.

Next night by appointment he visited the Prince of Denmark at Kensington, whose compliment was "That he was glad the Queen had made so good a choice."—*Lord Keeper.* "I beg leave to assure your Royal Highness that no one can be more devoted to your service; both because you, Sir, have always been in the true interest of England, and also for that I know there is no surer way to render my poor services acceptable to her Majesty, than by my being first accepted by your Royal Highness." *

Councils on Sunday evenings.

He continued to attend the Queen every Sunday morning to chapel; and every Sunday evening at six there was a Cabinet Council, which the Queen attended, and all public business, foreign and domestic, was debated and determined upon.† When the Queen withdrew, she generally gave him an audience, that he might take her pleasure on filling up vacancies in the Church, and on legal promotions.‡ There were occasionally "Committees of Council," attended by the ministers, without the Queen; but till the accession of the Georges, who did not understand the English language, all important measures of the government were supposed to be deliberated upon by the cabinet in the presence of the Sovereign.

were generally laid aside, and the opposing factions were known by the "High and the Low Church parties."

* There is a memorandum in the handwriting of his daughter, Lady Sarah, still preserved, which gives a very interesting account of his appearance at this time: — "1705. The Queen after this was persuaded to trust a Whigg ministry; and in the year 1705, Ocb$^{r}$., she made my father L$^{d}$ Keeper of the Great Seal, in the 41$^{st}$ year of his age — 'tis said the youngest Lord Keeper that had ever been. He looked very young, and wearing his own hair made him appear yet more so; which the Queen observing, obliged him to cut it off, telling him the world would say she had given the Seals to a boy."

† E. G.—"Sunday, 21st Oct$^{r}$. 1705. Letters were read from Whitworth, who was with the Russian army, respecting its strength and operations. The next naval campaign was discussed, and the force was fixed which should be required from the Dutch. Reinforcements were ordered for Gibraltar. The propriety of sending a mandate to choose Sheriffs for the city of York after the charter day for that purpose was debated, 'to which the new Lord Keeper spoke the first time in Council.' The Queen desired her speech might be prepared by the Secretary of State for the opening of parliament (the topics, I presume, being then agreed upon), and to be reported at a Cabinet on Friday morning."

‡ E. G.—"This same evening, after the Q. withdrew, I was admitted into her bed-chamber, and there laid before her two livings, for which presentations desired; which she received very kindly, and said she would discourse me further next opportunity. Then I begged of her Majesty that Sir James Mountague, brother to Lord Halifax, might be her counsel in my place, which she readily granted." — *Diary*, p. 5, 6.

A. D. 1705. Installation of the Lord Keeper.

On Tuesday the 23d of October, the first day of Michaelmas Term, the Lord Keeper took his seat in the Court of Chancery in Westminster Hall. He held a levee in the Parliament Chamber of the Middle Temple, which was attended not only by the Judges and Queen's Counsel, but likewise by the Lord Treasurer, the Lord Privy Seal, the Lord Chamberlain, the Duke of Somerset, the Duke of Montague, Lord Halifax, Lord Somers, Lord Cornwallis, and many other Peers and Privy Councillors, who made a grander procession than had for a long time been seen on such an occasion. They all escorted him to Westminster Hall, and remained in the Court of Chancery till he was sworn in, and began business.* He piously says in his Diary: "During these great honours done me, I often reflected on the uncertainty of them, and even of life itself: I searched my heart and found no pride or self-conceit in it: and I begged of God that he would preserve my mind from relying on the transient vanity of the world, and teach me to depend only on his providence; that I might not be lifted up with the present success, nor dejected when the reverse should happen; that I might not be confounded or dismayed by the unusualness of my circumstances (and the like): and I verily believe I was helped by his Holy Spirit, from my sincere dependence on his good Providence, in this great undertaking." Then follows an addition, which must have been made after his fall: [" Glory be to God, who hath sustained me in adversity, and carried me through the malice of my

His pious reflections.

* "Anno Quarto Anne Reginæ, 11th October, 1705.

Wm. Cowper, Esq. Lord Keeper. } Wm. Cowper, Esquire, one of her Majesty's Councill learned in the law, received the Great Seal of England as Lord Keeper from her Maᵗʸ at Kensington on Thursday in the evening, being the 11th day of October in the year aforesaid, the Queen having sent for it the Saturday before from Sir Nathan Wright, Knt., Lord Keeper, by Mr. Secretary Hedges And on Tuesday, the 23rd of the said October, being the first day of Michaelmas term, the Lord Keeper went to Westminster Hall, accompanied by the Ld. Godolphin Ld. Treasurer, the Duke of Newcastle Ld. Privy Seal, the De of Somerset Mr of the Horse, the Earl of Kent Ld. Chamberlain, the Earl of Stamford & Essex, the Lds. Mohun, Colepepper, Cornwallis, and Somers, and several other persons of honor, and most of the Judges. The Lords accompanied him into the Court of Chancery, where he took the oaths of Allegiance and Supremacy, and of Ld. Keeper of the Grt. Seal of England, the Mr of the Rolls holding the book, and the Clerk of the Crown reading the oaths. After a motion made, the Lords departed, and left the Lord Keeper in the Court." — *Crown Off. Minute Roll*, 1701—1714.

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enemies;—so as that all designed for my hurt turned to my advantage."] *

A.D. 1705.

The Whigs were much delighted by Cowper's elevation; but it caused great alarm to the High Church party, and as Godolphin still wished for their support, he pretended that he had no hand in it, and even that it had taken place against his wishes. Lord Dartmouth in his notes on Burnet, says:—"The day after Cowper had the Great Seal I met Lord Godolphin at St. James's, where in discourse I told him that the world was in high expectations from the new Keeper: he said he had the advantage to succeed a man that nobody esteemed; but the world would soon have other sentiments, for his chief perfection lay in being a good party-man, and seemed desirous I should understand that it had not been done with his approbation, which I did not doubt, knowing it was part of his penance for having passed the Scotch Act of Security, and that there were things of a harder digestion to follow." †

Reforms in Chancery.

The new Lord Keeper devoted himself most earnestly to the discharge of his judicial duties. He not only gave rapid despatch to the business which came before him, but he earnestly consulted with Lord Somers about reforms in the Court of Chancery. Some abuses were corrected by Orders, and others requiring the interference of the Legislature for their removal, were reserved for Lord Somers's great bill to amend the law, now about to be introduced.‡

He abolishes New Year's Gifts.

One most beneficial change he effected by his own authority, and from his own sense of what was right. Hitherto, according to ancient custom, large "New Year's Gifts" were annually made by all the officers of the Court of Chancery to the Lord Chancellor or Lord Keeper. The consequence was that, for their reimbursement, they were allowed to extort large fees from the suitors; constant re-

* Diary, 6, 7.

† Burnet, v. 220. The last sentence, I presume, means to express the writer's high disapprobation of the act for securing the Presbyterian Religion in Scotland preparatory to the Union. This was condemned by many of the High Church party as irreligious, and leading to a dangerous toleration of heresy. The truth is, that Godolphin and Marlborough from this time were obliged heartily to coalesce with the Whigs, for the genuine Tory or High Church party were desirous to turn them out for Rochester and Nottingham.

‡ Ante, p. 195.

luctance was felt to visit their delinquencies with suitable punishment, and the Judge was crippled in the discharge of his most important duties. This usage was common to all the Courts in Westminster Hall. But there was another of a more monstrous nature — and still more pernicious — which was peculiar to Chancery — that all the Counsel who practised in the Court came to breakfast with the Chancellor, on the 1st of January * in every year, and in the hope of being raised to the bench, or of obtaining silk gowns, or of winning "the Judge's ear," made him a pecuniary present according to their generosity or their means, or their opinion of his venality or stability. † Lord Keeper Cowper resolved entirely to abolish all these "New Year's Gifts."

He first, out of delicacy, mentioned the subject to Godolphin the prime minister, knowing that he was likely to be privately censured, although no one could openly oppose him. In his Diary, under date, "30*th Dec.*" he says, "I acquainted the Lord Treasurer with my design to refuse New Year's Gifts—if he had no objection against it, as spoiling, in some measure, a place of which he had the conferring. He answered it *was not expected of me but that I might do as my predecessors had done, but if I refused he thought nobody could blame me for it.*"

Accordingly the Lord Keeper gave notice that no New Year's Gifts would be received by him. Nevertheless on the morning of the 1st of January, several came to his house with the usual offerings, but they were all denied admittance; and with self-gratulation, though not without apprehension of consequences, he immediately wrote in his Diary, "New Year's Gifts turned back: and pray God it doth me more credit and good than hurt, by making secret enemies *in fæce Romuli.*" The storm that he dreaded arose. No sooner was the fact known that the holder of the Great Seal had refused all New Year's Gifts than the Chiefs of the King's Bench, Common Pleas and

* For certain purposes this day was considered the commencement of the year, although the dating of the year was not altered till 24th March.

† Burnet, iv. 141. I suppose the counsels' presents varied a good deal, according to the prevailing opinion of the Chancellor's tenure of his office. If it was suspected that he might go out before the first day of Hilary Term (23d January), they must have dreadfully dwindled away.

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Exchequer, were thrown into a state of consternation; and alarm was felt by the Heads of the Treasury, and other departments of the government, who derived considerable advantage from the present-giving custom.* To mitigate the ill will which he had incurred with those who might have done him a mischief while he was not yet warm in his seat, he resorted to what he considered the justifiable artifice of pretending that it was only by mistake that he had refused the presents of the officers of his Court, and that he had intended to confine the refusal to the presents of the Counsel practising before him. In execution of this device, he wrote the following letter to his father Sir William, which the old gentleman was to show about to the offended Chiefs, and all others whom it might concern:—

"Jan. 2. 705.

"Honourd Sir,

Letter to his father respecting New Year's Gifts.

"Your saying yesterday I was y^e talk of coffee-houses, and on recollection apprehending you to be in a mistake as to some particulars, and therfore fearing you should be necessitated by others to speak of that subject, I send you this to prevent mistakes: y^e rather, because what you say will reasonably be thought of authority as to my concerns. The true fact is this. I had alwaies resolved to refuse the Counc. N. Y. gifts, as that which no Court or Judge in England or elsewhere received; and therefore y^e day before sent word to all y^e Counc. I could think likely to come to forbid it: but I sent to none of y^e Officers, intending to make the same distinction y^e other Chiefs do: I had accordingly prepared a cold breakfast for the reception of the Officers as usual, but finding several Counc. came who I had not thought of, and that they would come thick on one another, I could not be at home to some and not to others, and therefore to prevent disputing w^th y^e Counc. I was denyed to all: But I never forbid y^e other Officers, otherwise I would have this distinction made, y^e rather because I find, by being abroad, y^t to carry it so far, doth not please others besides y^e Chiefs, who

* This, as we have seen (Vol. II. p. 293.), in Elizabeth's time extended to the Sovereign.

probably submit to the same practise. Be pleased to let my Mo. see this, fro

"Yr most dutifull
"and affectionat Sonne,
"Wm. Cowper."*

He adhered, however, to his resolution to reject all New Year's Gifts whatsoever, saying that "he could not accept them even from the officers, after having once refused them, though unintentionally."

Notwithstanding the opposition which the reform at first encountered, Lord Cowper's disinterestedness was afterwards gratefully acknowledged by his colleagues †, and was rewarded by the well-known lines of Ambrose Philips: —

"He the robe of justice wore,
Sullied not as heretofore,
When the magistrate was sought
With 'Yearly Gifts.' Of what avail
Are guilty hoards? for life is frail,
And we are judg'd where favour is not bought."

Lady Cowper's Diary respecting New Year's Gifts.

When Lord Cowper was a second time Chancellor in the reign of George I., he was still resolute, and we have the following amusing entry in Lady Cowper's Diary, in reference to the abolished custom: — "*Jany.* 17. $\frac{14}{16}$. This month used to be ushered in with New Year's Gifts from the Lawyers, which used to come to near 3000*l.* to the Chancellor. The original of this custom was from presents of wine and provisions, which used to be sent to the Chancellor by the people who practised in his Court, but in process of time a covetous Chancellor insinuated to them that gold would be more acceptable; so it was changed into gold, and continued so till the first time my Lord had the Seals, every body having blamed it that ever had the Seals, but none forbidding it. The Earl of Nottingham, when Chancellor, used to receive them standing by a table, and at the same time he

* This letter is addressed —
"To my much honourd
Fa. Sr W. Cowper.
psent."

† Letter from Harley, 3d Nov. 1706.

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took the money to lay it upon the table, he used to cry out, 'OH, TYRANT CUTHTOM!' (for he lisped)—'My Lord forbid the bringing them.'"*

The arrears left by the late Lord Keeper were very formidable, and from his low reputation there were many applications for rehearings; but by diligence, method, and capacity, the business of the Court in a few terms was brought nearly into as good order as in the time of Lord Somers. The new Lord Keeper heard causes in the morning (from eight till one), and motions in the afternoon (from three till eight).†

Lord Cowper as an Equity Judge.

His judgments are to be found in "Vernon‡," "Peere Williams§," "Precedents in Chancery‖," and "Reports in Chançery." He is little indebted to his reporters, who give us but an imperfect notion of his powers of reasoning, and often substitute their own ungrammatical and quaint phraseology for the correct and simple flow of diction for which we know that he was remarkable. I do not think that he can be considered a profound jurist. He was not very familiar with black letter books; he does not seem to have devoted much time to the civil law; and I do not perceive him drawing illustrations from the codes of the Continental nations. But possessing great natural quickness and a retentive memory, he had diligently studied the more practical parts of the common law of England, with the little to be found in print respecting proceedings in Equity; and almost from the time of his being called to the bar he had had great experience on the circuit, and in all the courts in Westminster Hall. Without becoming, when called upon to distribute justice, such an indefatigable student as Lord Nottingham, he took some

* So disinterested was Lord Cowper in money matters, that he not unfrequently refused his regular fees on patents. Thus Colly Cibber tells us, that when Steele's patent, as governor of the Theatre Royal, passed the Seal, the Lord Chancellor, in compliment to Sir Richard, would receive no fee.—*Life*, ii. 47. His example, with respect to New Year's Gifts, was not speedily followed; and it is said, that till very recently, the Chief Justice of the Common Pleas invited the officers of his Court to a dinner at the beginning of the year, when each of them deposited under his plate a present in the shape of a Bank of England note—instead of a gift of oxen, roaring at his levee, as in ruder times.

† Nisi Prius sittings after dinner had been abolished just before I entered the profession; but evening sittings at the Rolls continued during the early part of the 19th century.

‡ Vol. II. § Vol. I. ‖ Vol. III.

pains to keep up and to enlarge his stock of legal lore. Above all, he looked so young and so handsome, and so good natured, and his demeanour on the bench was so courteous while it was so dignified, that there was at once a strong prepossession in his favour, he was hailed as "a lawyer and a gentleman*," and the public formed even an exaggerated estimate of the good qualities which belonged to him. His excellent good sense and knowledge of the world prevented him from displaying ignorance, and kept him out of the embarrassments into which indiscreet judges are betrayed. He was said even to send away the defeated party contented with him: — "Hujus sors ea fuit, juris dicundi, in quâ gloriam conciliat magnitudo negotii, gratiam, æquitatis largitio; quâ in sorte sapiens Prætor offensionem vitat æquabilitate decernendi, benevolentiam adjungit *lenitate audiendi.*" †

His decisions.

In reviewing his decisions one is struck by observing how, in the construction of wills, he repeatedly admitted evidence of parol declarations by the testator relative to intention; but this does not seem then to have been much objected to. ‡ — There being a devise of a trust of lands to A for life, with a power of leasing; remainder to the heirs male of the body of A, he erroneously decreed the trustee to convey to A an estate for life only, with remainder to A's first and other sons in tail male; but Lord Macclesfield reversed this decree, directing the trustees to convey an estate tail to A, although it was admitted that upon articles of marriage so framed the husband would have been made only tenant for life. §

He likewise fell into an error in holding that an executor to whom a specific legacy is given is not entitled to the surplus of the personal estate, and his decree was reversed on appeal to the House of Lords, on the motion of Lord Guern-

* I remember its being said of the four Judges of one of the Courts in Westminster Hall, " A is a lawyer, but not a gentleman; B is a gentleman, but not a lawyer; C is neither a lawyer nor a gentleman; but D is both a lawyer and a gentleman."

† Cic. pro Murænа.

‡ See 2 Vernon, 252. 517. 601. 736.

§ *Baile* v. *Coleman*, 2 Vern. 670.

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sey, who had then great weight as a law lord.* All Lord Cowper's other decrees stood, and, as far as I am aware, would now be considered of authority. One of the most important settled the question in favour of the law-making sex, whether a husband should have courtesy out of a trust estate of the wife, although the wife was not dowable of the trust estate of the husband.†— He laid down the rule, which has been since followed, that if there be a devise of lands to trustees to convey in a manner forbidden by the law against perpetuities, the devise is not void, and the conveyance shall be made as near the intent of the testator as the rules of law will admit.‡ — He decided the famous case of *Onions* v. *Tyrer*, upon the revocation of wills, more frequently cited than almost any other in our books, laying down, that if there be duplicates of a will, a cancellation of one duplicate operates a revocation of both, and that a will well executed is not revoked by a will intended to revoke it, if there be any defect in the execution of the revoking will.§ — He laid the foundation of a valuable title in the law of "principal and surety," by holding that the master who obtains a bond for the good conduct of a servant has no remedy upon it for a loss which might have been prevented by ordinary diligence on his own part.‖ — He had a very nice point to determine upon the law of "*donatio mortis causa.*" A testator, after making his will appointing an executor and residuary legatee, when dangerously ill, gave 100*l.* to a person not named in the will, to be retained as a gift if he should not recover; and died of that illness. The question was, whether this was not a parol alteration of the will?—*Lord Cowper.* "The objection is not so strong as if there had been a specific bequest of a chattel, and then a gift, *mortis causâ,* of the same chattel. Devising the *residuum* is only the rest of his estate that he should die possessed of: but this is a gift in

* *Lady Granville* v. *Duchess Dowager of Beaufort*, 1 Peere Williams, 114.; and see *Ball* v. *Smith*, 2 Vern. 675. Lord Guernsey was one of the Finches; our greatest *famille de robe*.

† *Watts* v. *Ball*, 1 P. W. 108.

‡ *Humberston* v. *Humberston*, 1 P. W. 332.; 2 Vern. 737.

§ *Scott* v. *Houghton*, 2 Vern. 560.; *Onions* v. *Tyrer*, 2 Vern. 741.; Pri. Ch. 459.; P. W. 343.

‖ *Mountague* v. *Tidcombe*, 2 Vern. 518.

the testator's lifetime, although *mortis causâ*, and the possession was transmuted. Notwithstanding the will, the testator had the power to give away any part of his estate in his lifetime, either absolutely or conditionally. The will, therefore, shall have its full operation, although the donee of the 100*l.* *mortis causâ* retains his gift." *—In one case Lord Cowper, backed by Lord Chief Justice Trevor, had the courage to decide a case, upon the execution of a leasing power under a settlement, against the opinion of Lord Chief Justice Holt, —with the general approbation of the profession. Tenant for life, with a power "to grant leases of all lands anciently demised, reserving the ancient rents, and of the other lands, reserving the best improved rents," granted one lease of the whole, "rendering for the lands anciently demised the ancient rents, and for the other lands the best improved rents." Holt thought the lease valid, being in the words of the power; but it was decreed to be void, as contrary to the intention of the settler. †

I will finish with a case more amusing to the general reader:—"One Mr. Cornwallis having set up a lottery, called '*The Wheel of Fortune, or a Thousand Pounds for a Penny*,' Mrs. Fuller, the wife of Dr. Fuller, sent for twenty-four of those tickets, and gave them among the servants, upon condition, if twenty shillings or more should come up, her daughter should have a moiety of the prize, and one of them, thus given to her foot-boy, came up a prize of 1000*l.* The daughter brought this bill for the moiety of the money, and it was undeniably proved by the rest of the servants and others that the ticket, which cost but one penny, was given the foot-boy on that condition.—*Lord Cowper.* 'Cujus est dare ejus est disponere.' The foot-boy is an infant, but he is bound by the condition as well as one of full age; he may be a trustee, and is a trustee as to 500*l.* for the young lady." *Decree accordingly.* ‡

Speaker of the House of Lords.

Although the Lord Keeper remained a Commoner above a year after he received the Great Seal, his political avocations,

* *Drury* v. *Smith*, 1 Peere Williams, 404.

† *Orby* v. *Lord Mohun*, 2 Vern. 531. 542.; Eq. Cas. Ab. 343.; Prec. Chan. 257.

‡ Burnet, iv. 141.

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from the first, demanded a great deal of his time and attention. On the 25th of October, at the meeting of the new Parliament, he took his place on the woolsack as Speaker of the House of Lords*, and without a right to debate or vote, he was of great service by his advice in appeals and writs of error, and in the general business of the assembly.†

Union with Scotland. Lord Cowper a Commissioner.

Early in the Session the important measure of the Scottish Union being brought forward, he was named one of the Commissioners for England. The Archbishop of Canterbury, nominally at the head of the Commission, did not attend, but the Lord Keeper who was next in point of rank, was at the conferences which were held with the Scotch Commissioners, almost daily. He wisely deferred much to the experience and authority of Lord Somers; but by his insight into character and his conciliatory manners he had wonderful success in soothing Caledonian pride, and in quieting Presbyterian

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jealousy. On the 23d of July, he delivered to the Queen at St. James's the articles agreed upon, which were afterwards, with some small alterations, confirmed by the parliaments of the two countries.

Nov. 5. 1706. Lord Cowper pleased with his precedence.

In the meanwhile he notices several occurrences in his Diary, which, though of much less importance, still retain some interest. On "Gunpowder Plot day" he attended divine service in Westminster Abbey as Speaker of the House of Lords, and much as he may be supposed to be superior to such a gratification of vanity, he seems to have been much tickled with the precedence yielded to him on this occasion even by the Archbishop of Canterbury himself.‡

He recovers the borough of Hertford.

He was still more pleased soon afterwards by a vote of the House of Commons,—the result of a good deal of canvassing and management,—which restored to his family the borough of Hertford, lost to them ever since the trial of his brother

* He says in his Diary recording this fact, "All the Lords who were against my advancement all wished me joy,"—a statement which somewhat keeps in countenance the courtly insincerity of our own times.

† Burnet, iv. 141.

‡ Diary, p. 11.—Our Chancellors now-a-days (no doubt much to their *mortification*) are cheated out of this distinction by the House of Lords being always adjourned over Gunpowder Plot Day, Charles the Martyr's Day, and Ascension Day, that there may not be a procession to the Abbey.

Spencer for the murder of Sarah Stout. This victory is commemorated in the DIARY:—"The Hertford election carried for the petitioner. The question passed as I had worded it,—a fair step to deliver a pure town from manifest oppression and wrong."*

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His occupation on the woolsack.

Not being permitted to share in the debates in the House of Lords, he amused himself by taking notes of the speeches on the opposite sides, and marshalling on paper the conflicting arguments.†

Dinner at Harley's.

He furnishes us with an amusing account of a dinner given about this time by Harley, who still remained in office, though discontented and plotting against his colleagues. "I believed, when I see the company, this to be a meeting to reconcile Somers and Halifax with Harley, which was confirmed to me when, after Lord Treasurer was gone (who first went), the Secretary took a glass and drank to LOVE, AND FRIENDSHIP, AND EVERLASTING UNION, and wished we had more Tokay to drink it in (we had drank two bottles good but *thick*). I replied,—'His white Lisbon was best to drink it in, being very *clear*.' I suppose he apprehended it (as I observed most of the company did) to relate to that humour of his, which was never to deal clearly or openly, but always with reserve if not dissimulation, or rather simulation, and to love tricks even where not necessary, but from an inward satisfaction he took in applauding his own cunning. If any man was ever born under a necessity of being a knave, he was."‡

The Tories out of office were now going into open opposition, but a good many were retained in place; and Cowper pressed that these called the "Court Tories" should be

* Diary, 18.—He suspected that Harley was already intriguing against him, and trying to get a decision in the House of Commons on the Hertford Election Petition, contrary to his interest. Diary, 25.—"After the Q. gone, I asked Secretary Harley what he thought would be the success of Hertford business next day. He said it would certainly do well if yesterday's business did not spoil it. This I then understood as a menace from him, that he would do all he could underhand to spoil the Hertford business."

† Diary, 15.

‡ "Sunday, January 6. 1706."—Diary, 33. It is curious to see how he wrote of his then colleague—the future Lord Treasurer of the famous Tory ministry.

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made to act as one party with the Whigs — when Halifax observed to him — "We are mixing oil and vinegar." *

The Lord Keeper was allowed to name the English puisne Judges, and all the Irish Judges, although, in exercising this patronage, he was influenced by the opinion of Godolphin.†

Civilities shown to him.

He thus very naturally expresses his delight with the attentions he received from the great hero of the age: "Lord Marlborough sworn in Chancery. He took occasion to speak much and very kindly to me in public. He is a great master of a very winning address." ‡ About the same time he makes an entry respecting the leader of the High Church party, showing liberality on both sides. "Lord Rochester a good-natured man, though hot. He had, during the debate, signified to me (civilly enough) that I should sit when I happened to be standing; and he afterwards came and asked my pardon in a very kind and obliging manner. He formerly did the same when I was counsel at the bar, and he had stopped my going on (as he ought) in a matter which was not open for me to speak to by the strict rules of the House. What related to one so inconsiderable as myself, especially when at the bar, could only proceed from good nature; for which, if it ever should be in my power, I should be glad to do him kindness, though a violent man of a contrary party to that I think most in the interest of England." §

Recorder's report.

The custom now prevailed, which was continued till the accession of Queen Victoria, that a report was made to the Sovereign in council of all persons capitally convicted at the Old Bailey Sessions. Thus he notices his own humane conduct on the first report after he was in office: "Sunday, 9. A Cabinet. The Recorder reported the convictions. I spoke

* Diary, 12.

† Extracts from Diary. — 27th, Sunday: "A cabinet. Spoke to Lord Treasurer about Judges; he said he inclined to Mr. Dormer." 30th, "Was alone with the Queen in her closet. She asked me to propose a Judge for England, and Chief Baron for Ireland. . . . . . As to the Irish Baron, I stated the difficulty in procuring a fit man; but told her it was certainly the interest of England to send over as many magistrates thither as possible from hence, that being the best means to preserve the dependency of that kingdom on England. The Queen said she understood they had a mind to be independent if they could; but they should not." Friday, Jan. 8. — "At night I waited on the Queen, and introduced Mr. Dormer to kiss her hand for Judge's place." — *Diary*, 37.

‡ Diary, 39.

§ Diary, 15, 16.

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to save one, the evidence being doubtful; and the other for first offence. One respited till further order; the other transported."*

Lord Cowper in domestic life.

Before we proceed farther with his political career, we must pause for a short time to view him in his domestic circle, where, as far as I can trace, after he recovered from the errors of his early youth, he always appears most amiable. He had some years before been thrown into deep affliction by the loss of his first wife, and the only child which she brought him. When he received the Great Seal he had recovered his spirits, and being so young and handsome, and holding so high an office, he was looked to as a great *parti* by all the maids of honour and aspiring beauties who adorned the drawing room of Queen Anne. At last he fixed his affections on a young lady of extraordinary vivacity and accomplishments, though she was of a Tory family—Mary, daughter of John Clavering, Esquire, of Chopwell, in the Bishopric of Durham; and in the long vacation of 1706 he was happily united to her in marriage. A few of his letters to her may interest the reader, as showing the manners of those times, and the human heart — the same at all times: —

His second marriage.

"Sept[r] 19. 1706.†

Letters to his second wife.

"The first thing I doe this morning is to sit down to write this to acquaint my life what I am very sure your concern for me will not think impertinent, y[t] I got safe at last to my house yesterday after a very troublesome journey. Wee met the cold northern wind and rain all the way, and being perfectly in the y[e] dark y[e] three last miles, y[e] coach was forced to goe very slow, and y[e] poor servants through y[e] violence of y[e] storm could not use their eyes w[ch] they could have done, if it had been calm. The coach was two or three times in danger, but got no hurt. The only consolation I had was to think your journey was shorter, and by day light, so that I was not in fear for what I was most concerned for. You declare against speeches, and I believe care as little to read as hear them, and certainly never man stood less in need of them if

* January 26.

† This letter is indorsed in the handwriting of Lady Cowper: "My L[ds] first letter to me after we wer marry'd."

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the truest love and highest esteem are able to give undeniable evidence of themselves. I believe they are, and therefore shall depend for ever on making love to you that way. Though y$^{e}$ part I act is very painfull, yet 'tis heaven to what I should have felt if I had left you for any time with distrust of the sincerity of my intentions towards you, and I am farther satisfyed in having given you proof that what I have done is not to please an ungovernable appetite, w$^{ch}$ perishes as soon as gratifyed, but that I have been led by motives of love and value of you, w$^{ch}$ are of such a nature that they can never end but by God's or your own act. I beg you to take the best care of your health, and to preserve and improve that degree of affection w$^{ch}$ I flatter myself you have for me, or y$^{e}$ little temptation I laid in your way (much less than I design) would not have prevailed. Take care of the points wherein my interest is so much concerned, w$^{ch}$ is now become yours, and I hope so to order things as in a little time without any disadvantage that may incurr y$^{e}$ censure of y$^{e}$ pretended wise, to spend y$^{e}$ remainder of my life in y$^{e}$ enjoyment of that happiness my imagination hath laid up for it. I am, with the greatest truth,

"Your most affectionat Husband
"and humble Servant,
"Wm. Cowper.

"Next Saturday's, Tuesday's, or Thursday's post will bring yours to me directed to me at my house in Hertingfordbury, near Hertford, Hertfordshire."

"Sept$^{r}$ 24. 1706.

"Mad$^{m}$,

"I had a messenger to wait at y$^{e}$ Posthouse for the pleasure of yr lre, by w$^{ch}$ means it came to my hands on Sunday as soon as I came fro church in y$^{e}$ morning. I do not fear any one suspecting by it my corresponding w$^{th}$ a lady; y$^{e}$ hand is like the writing of one used to much business of that kind. I dare not tell you, even at this distance, how much it pleasd me, and how great an opinion it has given me of your abilitys in that way, for fear I should provoke y$^{r}$ mo-

desty to bear malice against me for complimenting you (as you will call it) till I am so happy as to see you. You say had you known the danger before, you would have put out of my power to have run into it. I thought I had before acquainted you with my design of carrying y$^{e}$ Lady you mention down w$^{th}$ me *, and therefore inferred y$^{t}$ frō my writing she was here, you would inferr I did so: We were run upon a bank in y$^{e}$ dark, and y$^{e}$ coach was in some danger, as wee could just see, of falling into much lower ground. At that instant I could not but think of y$^{e}$ fable, wher y$^{e}$ man that's going to be cast away is pleased that y$^{e}$ end of y$^{e}$ boat wher his enemy sat was going to sink first. I would have taken care, I assure you, to have fallen as soft as I could, for my side would have been uppermost. Having supplyed y$^{e}$ defect you put me in mind of in my lrē, let me do so w$^{th}$ yours: you do not mention the occasion of your taking so unlikely a resolution to be preferred, and what could put so improper a purpose into your heart. I took the first opportunity of giving you my handwriting to what I had before done, but you have far outdone me, when you let me see that those severe words concerning obedience w$^{ch}$ the church and custom exacted frō you were not merely submitted to as necessary, and of course, but y$^{t}$ you will voluntarily run into a lasting assurance of y$^{e}$ same matter. I know not how to be even with you but by begging to beleiv this great truth, y$^{t}$ if you design to deal so by me, you shall be the best dissembler in the world of y$^{r}$ inclinations, if ever you catch me at willing any thing you do not like, or denying any thing that you doe. I hope the picture goes on successfully; if done by the time my next banishment begins, it will serve to support me under it, for do not imagine from any thing that may look a little trifling or chearfull in this letter y$^{t}$ my mind is here constantly in that tune; 'tis only while I enjoy this half conversation w$^{th}$ you, who I assure you are y$^{e}$

* I presume an old fat housekeeper — not the simultaneous wife, who, according to Voltaire, formed with them such an amicable trio. — *Phil. Dict.*

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only satisfaction I propose to my hopes in this life. I am most faithfully,

"Your affectionate Husband and
"humble Servant,
"W. C."

"Fryday, Dec. 20. 1706.

"Mad$^{m}$,

"I cannot pass this day without g$^{t}$ uneasiness unless I inquire of y$^{r}$ health, and hear from you; but I beg it may be very little, if at all troublesom to you to write. I am going to visit my Mother, and perhaps shall begin to prepare her for what she must, I hope, know in a little time. Let me now beg of you, when I cannot see you frown, to give me leave to know, either frō yourself or some other, your pleasure in y$^{e}$ maters I would have talkd of w$^{th}$ you. I verily think one reason of my writing to you this night, was my seeing Camilla up for to-morrow. I have so often interfer'd with her, y$^{t}$ I am ashamed of it, and beg y$^{t}$ if you would have been there, if I had not spoke of waiting on you, you will not let that hinder you, and I will make myself amends by seeing you y$^{e}$ first minute I can afterwards. I beleiv I shall take courage to goe once incognito (I don't mean in disguise) y$^{e}$ approaching time of liberty for those that work hard: That you may be alwaies most happy, shall be the constant prayrs and endeavours of him who is only yours, C."

"Dec. 21. 1706.—11. night.

"My D. M.

"I cannot go to rest without expressing, so as you may have it early to-morrow, my concern and amazement to consider by w$^{ht}$ steps you could collect so much disquiet frō so harmless a passage. I cannot recollect I said any one thing, that should give my life y$^{e}$ least occasion for such a charge as I find in y$^{r}$ letter: heaven is my witness I never did nor meant to reproach you for any thing, nor did I ever beleiv or think I had y$^{e}$ least reason so to do: much less for the quality you mention frō w$^{ch}$ I ever did and do think you the furthest removd of any one under heaven. The only expression on my part y$^{t}$ could be s$^{d}$ to sound like reproof, was, y$^{t}$ I would wait on you o' Saturd. *notwithstanding* w$^{ch}$ I in-

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tended only for, and I really think was no other, than a kind reproof, for your unreasonable modesty; and tis my want of Skill, if it be not y$^{e}$ language of a Lover. I am sure it proceeded from a heart entirely, at the moment it spoke, possessed w$^{th}$ that passion for you, fully convinc'd of your great merit, for w$^{ch}$ I really revere you, and perfectly satisfyed of your loving me to the extent of my eag'rest wishes. If I have any fault to find, 'tis rather y$^{t}$ you love too much; nothing else could frō so small a spark blow up such a flame of apprehensions that, beleiv me, are unwarrantable. The expression in my letter, wherein I mention y$^{r}$ frown, is utterly perverted by my d. Love's melancholy fancy; if you look again, you'll find it nothing but raillery, and I meant it only to make you merry; so y$^{t}$ I was extremely concern'd to find you undertake it as gravely as you do. I never thought of being at Camilla to-morrow, but some time in Xmas, as you'll find by my letter on a review; and yet that you apprehend as if I meant to goe though you did not. I am very desirous to set all your mistakes right, and in order to do it, will waite on you the first minute I can to-morrow (Saturday). There is nothing I have so much at heart, as to please you in all my words and actions; and therefore I am very unfortunate whenever, contrary to my endeavours, it proves otherwise. I can never mean better, but since I see how dangerous it is to jest upon so nice a subject, I shall learn hereafter to tread w$^{th}$ more care, and not leave y$^{e}$ most innocent expression, if I can, to a possibility of misconstruction. I'll conclude w$^{th}$ owning I am highly guilty of y$^{e}$ vanity of beleiving wh$^{t}$ you desire me to beleiv in y$^{e}$ conclusion of y$^{r}$ letter; and in gratitude, I hope, you'll give me credit, when I assure you I have no prospect in life I set y$^{e}$ least value upon, but the continuance of yō favour, and y$^{e}$ unspeakable pleasure and satisfaction I shall ever find in doing you all the good that is in my power. God bless us. Good night!"

These epistles, I think, place the Lord Keeper in a very amiable point of view, showing how he could forget the anxieties of business and the struggles of ambition. At the very time when he wrote them, Marlborough was conducting

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one of his most critical campaigns, on which the fate of Europe and of the Whig party mainly depended; and a great rivalry was raging between opposite factions in the English cabinet.

Harley, intriguing to give a superiority to the Tories, preserved a very civil exterior to the Whig Lord Keeper, and pretended even to be impatient to see his merits rewarded by his elevation to the peerage — as we learn from the following letter,—which may be said to show that the art of writing, as well as speech, is given us to *conceal* our thoughts:

Nov. 3. 1706.

"My Lord,

Hypocritical letter from Harley to the Lord Keeper.

"I received the honour of your Lordship's letter at this place, and I did intend to have been in town as soon as I could have sent an answer, but the excessive floods have confined me; and therefore I will not longer delay the making the most hearty acknowledgments to your Lordship for your favour; I heartily wish it were in my power, by any effectual service, to express the just esteem I have for your Lordship: I do take it to be the best service to the Government, as well as justice to your Lordship in all places, and upon all fitting occasions, to show the world with how great integrity and and despatch that great office is discharged; and as your Lordship's unparalleled generosity, the refusing the New Year's Gift, hath brought honour to the Queen's service, so I never omit saying to proper persons that it is a justice due to your Lordship's merit to let the world see the esteem the Queen has for you by a public mark of honour.

"If your Lordship had been in town when I came away, I would have asked your Lordship's opinion upon what heads I should discourse the gentlemen of the county against the next session of Parliament; I have seen a great many in several counties, and of both parties, and I find both sorts are very desirous to quit their (pretended) leader, and unite in the Queen's service, if they may be permitted. I see plainly that a few good words, and a little impartiality, will make every thing easy; and it is as plain that the other scheme will not subsist more than one session, if it does that; but I will not trouble your Lordship farther upon this head,

'till I have the honour to wait upon you in Lincoln's Inn Fields. I beseech your Lordship to be so just as to believe me to be with the utmost esteem,

"My Lord,

"Your Lordship's most humble, and

"most obedient servant,

"Ro. Harley."

He is created a Peer.

With the assistance, or in spite of Harley's efforts, "the justice due to his Lordship's merit" was soon after done. On the approach of another session of parliament, there being a large promotion in the peerage, he was created Baron Cowper, of Wingham, in the county of Kent. It might be expected that I should now be able to gratify the reader by proofs of the Lord Keeper's great powers as an orator; the Scottish Union, with many other important measures, came on to be debated, and he fully sustained the reputation for eloquence which he had acquired as a commoner. Yet from the time when he took his seat in 1706 till he resigned the Great Seal in 1710, his name is not to be found in the parliamentary history, unless on the occasion of his returning thanks to the Duke of Marlborough, by order of the House of Peers. I may present as a specimen of the style of parliamentary reporting in the reign of Anne, the fullest account of the principal debate in the Lords on the Union with Scotland. The names of some of the opposers of the measure are first given, with a slight touch of the objections which they urged, and then the leaders on the other side are thus grouped and complimented: — "The Lords Somers, Halifax, and others, made very pertinent answers to these objections, after which the House divided, and the contents were 71, the non-contents 22." *

No reports of his speeches in the House of Lords.

Lord Cowper's address to the Duke of Marlborough, in returning him the thanks of the House for the victory at Ramillies, was ordered to be entered in the Journals, and is thus preserved to us: —

"My Lord Duke of Marlborough,

"I am commanded by this House to give your Grace their

Dec. 5. 1706.

* 6 Parl. Hist. 568. The Lord Chancellor was among the "others."

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Lord Cowper returns thanks to the Duke of Marlborough.

acknowledgment and thanks for the eminent services you have done, since the last session of parliament, to her Majesty and your country, together with their confederates, in this just and necessary war.

"Though your former successes against the power of France, while it remained unbroken, gave most reasonable expectations that you would not fail to improve them; yet what your Grace has performed this last campaign, has far exceeded all hopes, even of such as were the most affectionate and partial to their country's interest and your glory.

"The advantages (I use the lowest expression for every thing) which you have gained against the enemy, are of such a nature, so conspicuous in themselves, and so undoubtedly owing to your courage and conduct, so sensibly and universally beneficial in their consequences to the whole Confederacy, that to attempt to adorn them with the colouring of words would be vain and inexcusable; and therefore I decline it, the rather because I should certainly offend that great modesty, which alone can, and does, add a lustre to your actions, and which, in your Grace's example, has successfully withstood as great trials as that virtue has met with in any instance whatsoever.

"Only I beg leave to say, that if any thing could move your Grace to reflect with much satisfaction on your own merit, it would be this, that so august an Assembly does with one voice praise and thank you; an honour, which a judgment, so sure as that of your Grace's to think rightly of every thing, cannot but prefer to the ostentation of a public triumph." *

Oct. 1707. Lord Cowper the first Chancellor of Great Britain.

The Act of Union provided that there should be one Great Seal for the United Kingdom; although a Seal should still be used in Scotland in things relating to private right †; and Lord Cowper was the first Lord Chancellor of Great Britain, being so declared by the Queen in Council, on the 4th of May, 1707, four days after the Act came into

* 18 Lords' Journ. p. 177.; 6 Parl. Hist. 546.
† Art. xxiv.

operation.* On the assembling of the United Parliament, the Queen, in a speech which he prepared, said piously and pointedly, "It is with all humble thankfulness to Almighty God, and with entire satisfaction to myself, that I meet you here in this first parliament of Great Britain; not doubting but you come with hearts prepared, as mine is, to make this Union so prosperous as may answer the well-grounded hopes of all my good subjects, and the reasonable apprehensions of our enemies."

Oct. 28. 1708. Ascendency of the Whigs.

At this period of Anne's reign, the Whig star was in the ascendant. The Duchess of Marlborough still kept Anne under much subjection. Prince George, who was supposed to have had an antipathy to them, and to have exerted against them any little influence he enjoyed, was no more, — and they gained considerable popularity from the brilliant success of the war, which was considered their measure. On the dissolution of parliament in the following year, they gained a decided majority in the House of Commons; Harley and St. John were obliged to retire from office, and Lord Somers, being made President of the Council, they considered the government free from Tory taint.

He delivers address, praying Queen Anne to marry again.

The Session of 1708-9 began with placing the Lord Chancellor rather in a delicate position. The two Houses having voted a condolence to the Queen on the death of her husband, which was privately presented to her; she proceeded to give a very necessary order, — (she now being a widow,) — that the prayer should be discontinued, which, from her accession, had been put up in all churches and chapels during divine service, "to make her an happy mother of children," and the Commons, after the fashion of Queen Elizabeth's parliaments, unanimously resolved that an address should be presented to her, praying, "that she would not suffer her just grief so far to prevail, but would have such indulgence to the hearty desires of her subjects, as to entertain thoughts of a second marriage." This re-

* London Gazette. — "Whitehall, May 4. 1707. This day her Majesty in Council was pleased to declare the Right Honourable William Lord Cowper Lord High Chancellor of Great Britain."

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solution was sent up to the House of Lords, who were bound unanimously to concur in it, and the joint address of the two Houses was ordered to be delivered to her Majesty by the Lord Chancellor. He was a member of a joint committee for drawing it up; and, on his suggestion, the following address was adopted, which, considering that her Majesty was not only in her first weeds, but in the forty-fourth year of her age, with a constitution much impaired by good living and by the gout, shows some tact on the part of the framer of it: "MOST GRACIOUS SOVEREIGN, We, your Majesty's most loyal and dutiful subjects, the Lords spiritual and temporal, and Commons, in Parliament assembled, being truly and deeply sensible of the many and great blessings we have enjoyed during the whole course of your Majesty's most glorious reign, do most humbly conceive we should be inexcusably wanting to ourselves and the whole kingdom, if we should neglect to use our most zealous endeavours that those blessings may be derived down to future ages: and, therefore, with hearts full of the most profound respect and duty to your royal person, we most humbly beseech your Majesty graciously to consider the universal desires and most humble supplications of your faithful subjects, that your Majesty would not so far indulge your just grief as to decline the thoughts of a second marriage. This would be an unspeakable joy to your people, who would join their most fervent prayers to Almighty God to bless your Majesty with royal issue; all of them concurring in this opinion, that no greater happiness can be desired for your kingdom than that they and their children may long continue under the gentle and gracious government of your Majesty and your posterity."

The poor Queen, much embarrassed, after expressing her gratitude for the marks of affection she received from the two Houses of Parliament, and her anxiety for the Protestant succession — concluded by saying, "The subject of this address is of such a nature, that I am persuaded you do not expect a particular answer." *

* 6 Parl. Hist. 777.

The remainder of the Session exhibited a series of easy victories gained by the Whigs; but we have no account of any speech of Lord Chancellor Cowper in the course of it, except another address of thanks, by order of the House, to the Duke of Marlborough, for his eminent services. On this occasion the Chancellor, with good taste, was very brief, and touched all ministerial hearts by pronouncing these words with solemn and tremulous voice, to indicate that they proceeded from patriotic piety: "I cannot conclude without acknowledging with all gratitude the providence of God in raising you up to be an instrument of so much good, in so critical a juncture, *when it was so much wanted*," — although profane scoffers pretended that the Lord Chancellor was thinking less of the fate of the nation, than of the fate of the Whigs.

Dementation of the Whigs.

Whether this party had offended Heaven by any profanity, or for what cause they were to be subjected to divine vengeance, we know not; but certainly soon after this time they seem to have been deprived of their understanding, and they were given as a prey into the hands of their enemies.

Impeachment of Sacheverell.

Now was preached the famous sermon of Dr. SACHEVERELL against VOLPONE and his colleagues, and now was commenced the preposterously foolish impeachment which I have inadequately censured in the life of Lord Somers.* It is understood that Lord Cowper joined with the more Whiggish section of the Cabinet in recommending that the sermon should (according to a very prevalent fashion), be, like the Non-resistance Decree of the University of Oxford, merely burnt by the hands of the common hangman, or that it should be left to the cognizance of the ordinary courts of justice, or that it should be passed over with silent contempt,— but that Godolphin being furiously bent upon an impeachment by which he hoped successfully to vindicate his private character and the public principles on which he had acted, they were afraid of a fatal split in the Cabinet by farther resistance. They all honestly exerted themselves to bring it creditably to a termination, and Mr. Burke thought that in

* Ante, p. 204.

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the speeches which they delivered, are to be found the true principles of genuine Whiggism and of the English constitution.*

Lord Cowper's address to Sacheverell.

Lord Cowper presided as Chancellor when the hearing began in Westminster Hall, and he comported himself during the long trial which ensued with great dignity and propriety. Thus he addressed the defendant, who appeared when proclamation was made for him, and he knelt at the bar:—"Dr. Sacheverell, it is needless to give you any directions concerning your behaviour during the time of your trial or the ordering your defence, because the Lords have not only allowed but assigned you the counsel you desired, some both of the civil and common law, who will be able to direct and advise you not only in the substance but form of your defence. The Lords have also made an order for summoning all such witnesses as you have propounded to appear for you, and that you might be the better able to provide for your defence, you have had your liberty on the first application for it and giving security for your appearance. You have also had all the time you thought fit to desire, in order to prepare for your defence, so that you ought ever to remember that their Lordships have used towards you all the indulgence you could reasonably expect." While the Peers were sitting in Westminster Hall, the Chancellor did not interfere farther than by saying, "Gentlemen of the House of Commons," or, "Gentlemen, you that are counsel for the prisoner,—may proceed." When the great difficulty arose from the objection that the articles of impeachment did not set out the passages of the sermon complained of as libellous, he very fairly put the question to the Judges, "Whether, by the law of England and constant practice in all prosecutions by indictment or information for misdemeanours by writing or speaking, the particular words supposed to be criminal, must not be expressly specified in such indictment or information?" I should have thought there was great weight in the objection, and should have yielded to it; but I make no doubt that it was conscientiously overruled

* "Appeal from the New to the Old Whigs."

by Lord Cowper and Lord Somers, notwithstanding the habit of imputing party motives to Peers in all judicial cases connected with politics.*

Fracas with the Speaker of the Commons.

When sentence was about to be pronounced, an altercation arose below the bar of the House of Lords, which, but for the discretion of the Lord Chancellor, might have led to very serious consequences. When Sir Richard Onslow, the Speaker of the Commons, came up to demand judgment, a question arose whether his mace was to be admitted into the House of Lords, and "the Gentleman Usher of the Black Rod" insisted that it should be left outside the door — which he said was according to ancient precedent. The Speaker threatened to return to the House of Commons and complain of this indignity, but Lord Cowper ordered that the mace should be admitted. "Black Rod" being then ordered to produce his prisoner, was going to put him on the right hand of Mr. Speaker, who was thereupon very wroth, and exclaimed, "My Lords, if you do not order the Black Rod to go with the prisoner on the left hand of me at some distance, I will return to the House of Commons;" upon which the Lord Chancellor directed Black Rod so to do, and then Mr. Speaker demanded judgment.†

Sentence on Sacheverell.

The Lord Chancellor addressing the prisoner, recapitulated the proceedings against him, and coming to the objection to the framing of the Articles, said: — "Their Lordships have resolved that by the law of parliament, which is part of the law of the land in prosecutions by impeachment for high crimes and misdemeanours, by writing or speaking the particular words supposed to be criminal, are not necessary to be expressly specified in the articles of impeachment. So that, in their Lordship's opinion, the answer of the Judges which related only to the course used in indictments and informations does not in the least affect your case. The

* See Layer's case, 10 St. Tr. 93.

† The Lords' Journals are silent respecting this controversy, but all the particulars are carefully recorded in the Journals of the Commons, who have ever since enjoyed the privilege of taking their mace, with the Speaker, into the House of Lords, and of having the prisoner placed at some distance on the Speaker's left hand,—which were considered great constitutional triumphs."— 15 St. Tr. 472.; 4 Hats. Prec. 293.

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Lords, therefore, find themselves obliged by law to proceed to judgment against you, which I am ordered to pronounce, and in which you cannot but observe an extreme tenderness towards your character as a minister of the Church of England. This high Court doth adjudge, That you, Henry Sacheverell, Doctor in Divinity, shall be, and you are hereby enjoined not to preach during the term of three years next coming," * — O! most lame and impotent conclusion!!! The drivelling parson was considered a greater hero than Marlborough, and his prosecutors were scattered to the winds.†

Improper prosecutions for high treason.

The Whigs showed the infatuation or *dementation* under which they were labouring, and considerably encreased their unpopularity by very improper prosecutions for high treason, which they now instituted, and for which the Lord Chancellor, as head of the law, deserves severe blame. During the Impeachment, the High Church mob, who accompanied their idol daily to Westminster, pulled down a dissenting meeting-house in Drury Lane, and another in Lincoln's Inn Fields — burning the pulpit and the seats, and huzzaing for "High Church and Sacheverell!" ‡ They might very pro-

* 15 St. Tr. 1—522.

† Although he was silenced in the pulpit, he was not incapacitated from receiving ecclesiastical preferment; and a fine living in Wales was immediately bestowed upon him. His journey to take possession of it resembled a royal progress. The nobility and gentry were eager to have the honour of entertaining him, afterwards looking with reverence on the bed in which he had slept; and in all the towns through which he passed he was received with processions, ringing of bells, bonfires, and every demonstration of joy. Upon the dissolution of parliament, which soon followed, the members who had voted for his impeachment were almost universally cashiered, and many with great property and hereditary influence, and heretofore enjoying much individual popularity, did not venture to show themselves at the hustings, not only from the despair of success, but from the dread of personal danger. In the "Memoirs of P. P. Clerk, of this Parish," is to be found the most striking testimony to the celebrity conferred upon this *charlatan*. "We are now (says he) arrived at that celebrated year in which the Church of England was tried in the person of Dr. Sacheverell." And in drawing the characters of the members of the association which he formed to defend the Church, he mentions "Thomas White, a man of good repute, for that his uncle, by the mother's side, had formerly been servitor at Maudlin College, where the glorious Sacheverell was educated."

‡ The Latin special verdict in one of the cases is curious. "Progressi fuer' exultantes et clamantes, '*Huzza, High Church and Sacheverell!*' et declarantes qd ipsi omnes domos protestan' dissentien' ab Ecclesia anglican' pro divino cultu allocat' diruerent et præd' domu' in vico præd' vocat *Drury Lane* adtunc freger' et spoliaver' et subsellia rostrum (angl. *pulpit*) et al' ad inde spectan' in publico vico ibm adtunc protuler' ad comburend' et cum igne postea in eodem publico vico consumpser', &c."—15 St. Tr. 693.

perly have been prosecuted for a riot, and sentenced to a short imprisonment, but that they should be hanged, beheaded, and quartered as traitors, for "compasssing the death of the Queen," or "levying war against her," was contrary to the plain dictates of humanity and justice. Nevertheless, upon the doctrine that an insurrection to destroy all inclosures, or all brothels, is high treason, the rioters were indicted for that offence, and two of the leaders, Damaree and Purchase, a waterman and a joiner, being found guilty, had the frightful sentence, which till lately disgraced our law of treason, pronounced upon them.* Although they were afterwards pardoned, the Whig ministers were very justly blamed for vindictively bringing into jeopardy the lives of men attached to the Queen and the constitution, who had merely been betrayed into a breach of the peace from an excess of religious or party zeal.†

Lord Cowper inclined to peace with France.

When the crisis came, the whole conduct of Lord Cowper is highly to his credit for discernment, integrity, and public spirit. Taking (I think) a juster view than his colleagues of the question of peace and war, he in vain tried to save them from the odious charge of continuing the struggle for their own advantage, by representing to them that the object of the Grand Alliance had been gained by the humiliation of Louis XIV., and that this haughty sovereign, amidst all his reverses, never would submit to the disgraceful mandate to assist in driving his own grandson from the throne of Spain. "For my own part," says he, in his Diary, "nothing but seeing such great men believe it, could ever

* 15 St. Tr. 522—703.

Q. High treason to try to destroy all inclosures, &c.

† It may be too late to controvert the law laid down in this case, but no government would now direct such a prosecution to be instituted. In Frost's case, which occurred when I was Attorney General, I had no difficulty in advising a prosecution for high treason, as with an organised military band of 10,000 men he attacked the Queen's troops, and tried to storm the town of Newport, intending, by force, to change the constitution of the country, and to establish "the PEOPLE'S CHARTER;" but, in cases which afterwards occurred in the north of England, bearing much more the aspect of "levying war" than the Sacheverell riot, I prosecuted only for a misdemeanour.—The Tories may be excused for rewarding the zeal, and compensating the sufferings of honest Damaree, by making him chief waterman to the Queen, and appointing him to steer her barge.

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incline me to think France reduced so low as to accept such conditions." *

A. D. 1710.

Lord Cowper dissuades the resignation of the Duke of Marlborough.

The Queen, prompted by Harley and Mrs. Masham, giving signs of the coming change, it was apprehended that the Duke of Marlborough, then in Flanders, would immediately throw up all his offices; and Lord Cowper, with the Dukes of Newcastle and Devonshire, jointly wrote him a letter, earnestly recommending both for the sake of the country and of the party, that he would retain the command, so that there might still be a Whig gaining victories in the field, or that the odium of dismissing him should be thrown upon the Tories. Marlborough, who although converted into a very good Whig and for ever alienated from the party now eager to put an end to the war, having still a steady regard for his own interest, thought of a much better expedient than resignation, and proposed that, to increase the confidence of the Allies, he should receive a patent as "COMMANDER IN CHIEF FOR LIFE," so that an office which ought not to be connected with party politics might not depend upon the casualties of party struggles. He accordingly, without the previous sanction of his colleagues, caused this scheme to be submitted to the Queen, by Sarah his Duchess, now in the last agonies of expiring influence. Anne said, "she would consider of it," and, under the advice of those who now possessed her confidence, asked the Lord Chancellor whether such a patent would be legal and constitutional? Cowper was aware that grants somewhat similar and not more objectionable, proposed to be made by Queen Elizabeth to the Earl of Leicester, and by Charles I. to the Duke of Buckingham, had been opposed by Lord Chancellor Hatton, and by Lord Keeper Coventry, and he unhesitatingly declared that whether the proposed patent would be legal or not, it certainly would be unconstitutional, as, under a monarchy, military command could only be properly held during the pleasure of

But opposes his plan of his being appointed Captain-General for life.

* "Lord Treasurer, Lord President Somers, and all others, Lords, did ever seem confident of a peace (on the terms they wished to prescribe). My own distrust was so remarkable, that I was once perfectly chid by the Treasurer (never so much in any other case) for saying, 'such orders would be proper if the French King signed the preliminary treaty.' He resented my making a question of it, and said there could be no doubt, &c."— *Diary*, 41.

the monarch. Anne was thus enabled to say, that however willing to gratify the Duke of Marlborough, she found by the opinion of him in whom she and all her ministers confided so much, his request could not be complied with. The attempt was turned to great advantage by Harley and the Tories, who, during the rest of this reign, represented that the Duke of Marlborough had wished to make himself "Perpetual Dictator." Swift, in his "History of the Four Last Years of Queen Anne," pretending to be very mild and candid, says: "We are not to take the *height of his ambition* * from his soliciting to be *General for Life:* I am persuaded the chief motive was the pay and perquisites by continuing the war; and that he had *then* no intentions of settling the Crown in his family, his only son having been dead some years before." † In allusion to this attempt it was, that, when Addison's CATO came out in the year 1713, and the two rival factions strove which should applaud it most, Bolingbroke called Booth into his box at the theatre, and gave him a purse with fifty guineas "for defending the cause of liberty so well against a PERPETUAL DICTATOR."

Attempts by the Tories to induce Lord Cowper to retain office under them.

Although the Whig party had so much fallen in reputation, partly from their rejection of the overtures for a peace made by the French King at Gertruydenberg, but infinitely more from the charge to which they had foolishly exposed themselves of being the enemies of the Church, the Chancellor individually stood high in public estimation; and, for the credit of his name, the Tories were very desirous of retaining him in

* An expression probably taken from the epigram upon the high bridge over the little stream in Blenheim Park:

"The arch, the height of his ambition shows;
The stream, an emblem of his bounty flows."

† This character of Marlborough, by Swift, ought to make us look with some indulgence on the licentiousness of the press in our own times, which, being "pretty considerable," some suppose "unexampled." Our Marlborough is treated by political opponents with uniform deference and respect: but thus writes Swift, in what he calls "History"—of the hero of Blenheim, Ramillies, and Malplaquet, who never once retreated before an enemy—deliberately representing him even as a coward: "Those maligners who deny him personal valour, seem not to consider that this accusation is charged at a venture, since the person of a wise General is too seldom exposed to form any judgment in the matter; and that fear, which is said sometimes to have disconcerted him before an action, might probably be more for his army than for himself."

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office. They had one great lawyer of whom they were justly proud*; but he, seeing the precarious tenure of office in such a juncture, would have been better pleased to have been Attorney General, — with his practice at the bar to retreat upon in case of a reverse.

Accordingly, Harley, who at this time did not wish to give a complete triumph to the ultra-Tory party, which might endanger not only the Protestant succession, but his own stability, employed one Moncton to treat with Lord Cowper for his remaining Chancellor. An offer by letter having been declined, the negotiator, who was a common friend of the parties, made a journey from Yorkshire to London, and in a personal conference offered Lord Cowper his good offices to preserve him in his place. Lord Cowper made suitable explanations to acknowledge so great a favour, but said "things were too far gone towards the Tories for him to think it prudent to keep his place if he might, and that in case of a Tory parliament, Mr. Harley would find himself borne along into measures he might not like." The following day Harley himself came privately to Lord Cowper, who gives in his DIARY this amusing account of their interview †: — "Munday, 18. 5 o'Clock. M^r H. came to me & made great Expressions of his Esteem &c.; owned he came by the Q. leave & D. of Shrewsbury's consent, & undertook for L Harc^ts Approbation, to offer me to continue in my station, to act with me with Confidence and better friendship than the Junto had for me. He could say much of that, but would accuse none. — Gave me the History of the 3 months past, short & broken so that hard to be remembered. [Then follows a confused statement of intrigues between Godolphin, Marlborough, Harley, St. John, Harcourt, and Shrewsbury.] Used all Arguments possible to perswade me to stay in place: — All should be easy: — The Danger of going out ‡: — a Whig Game intended at bottom; enume-

* Sir Simon Harcourt.

† Copied with the original spelling and abbreviations.

‡ This reminds me of a saying I have heard of the late Lord Melville: "Never resign; for when you are once out, the Lord Almighty only knows when you may get in again."

rated w[t] Whigs in; declined (shuffling) to tell all the Removes intended, tho asked; endeavoured to possess me with opinion of Injustice of L[d] T[r] and D. of Marlb. towards him, & much broken unintelligible Matter *prout Mos* &c. To which I express'd great Hon[r] done by his kind Advances; but as to my staying in, shew[d] him a design I had open'd to L[d] T[r] before I knew his interest decay'd of getting a succ[r] being weary of my place; that being so indifferent towards it, I was not prepared to bear much for it; that I had already tasted Mortifications from L[d] Dart[m]. encouraged as I had reason to beleive from . . . .; that things were plainly put into Torys hands; a Whig Game, either in whole or in part, impossible; that to keep in, when all my friends were out, wo[d] be infamous; that in a little time when any Tory of Interest would press for my place, he must needs have it; that it was necessary a man in that place who had so much to do & judge of, should sit easy in his mind as to the circumstances he was in; that 'twas impossible I sho[d] be so during Measures I could not but think hurtful to the publick, & contrary to the true Interest of my Countrey; and on the whole desired him not to think of continuing me, but only to prepare the Q: to beleive my true professions, — that I wo[d] always endeavour to serve her, to assist her against any hard Attempts on either side, & to live well with the Ministry when I was out of place, if they pleas'd to allow me that favour. — He seem'd not much to beleive my declineing to stay in, & after much discourse, desireing me not to resolve, went away."*

In this belief, that the Great Seal could not be sincerely repudiated, Moncton returned to the attack, and in a visit of two hours went over all the arguments again, saying, "he had undertaken to succeed, and that, if he failed, he must throw himself into the Thames." But Cowper was firm, and intimated that his official functions being substantially finished, he was going to Colegreen, in Hertfordshire, to visit his wife who had lately lain in there. Moncton actually followed him, and still pressed him to continue to hold the

* Diary, 44.

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Great Seal, suggesting that he might thereby save the Whigs. Certain news arrived that there was to be a complete sweep, with the exception of the Lord Chancellor, and they returned to town together.

The same day a council was held, and the scene took place which Burnet so circumstantially describes, when the Queen ordered the Attorney General to produce the proclamation for the dissolution of parliament, and the Chancellor was interrupted in his speech to oppose this measure.*

An ineffectual attempt was still made next morning by Moncton to shake his resolution; but Lord Somers and all his friends being actually dismissed, he would no longer allow

* 4 Burnet, 290, 291.—The Diary notices a council, but is silent as to its proceedings. It appears, however, that Lord Cowper had received previous notice from some quarter, that the proposal of dissolution was to be made at the Council, and had prepared himself to resist it. I have, on a narrow slip of paper subsequently indorsed by him, "Heads prepared to speak from — ag$^{t}$ Dissol. Parl. 1710. Denyd to be heard,"—what he had jotted down just before going to St. James's:

"Hazardous — Dangerous
To home &
abroad
Honour of M.
& Peace of y$^{e}$ K.
Worth hearing both sides.
1. Cond. of last Sess.
Done nothing since to demerit
—must be something extra. w$^{ch}$
since happened
O. Vox populi
P. Not so &c.
If so = an arg$^{t}$
ag$^{t}$ it
— wounds prerog.
— crown approves
Proph: disapp. Ergo
(This if in eq. Balance)
But hurtfull &c.
2. A certainty
for an uncertainty
—put it all ways.
1. Wh. displeased
2. To. (word illegible) Taxes.
3. Mixt
Contention.
3. Too late for
Timly Supplys
Arrest the proceedings
in Spain, &c.
4. Encouragm$^{t}$ to
enemy
— to retard Peace.
They build upon
it, &c.
5. If Invasion
Who can answer
y$^{e}$ objection.
Why such a step un-
necessary.
6. The present ani-
mositys, heats, &c.
encreased by it.
Concl.
Can't suggest any
reasons on publ. acc$^{t}$.
And if this advice be
only to prep. revol.
in ministry
I think it is to sacr.
too much of y$^{e}$ publ. In-
terest to such a cause."

We have here an instance of the continuance of the practice of debating subjects in council before her Majesty, and making set speeches upon them. It would be thought strange now, if, at a council held at Windsor for a proclamation to prorogue parliament, a councillor should rise and harangue her Majesty against the measure.

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Queen Anne wishes him to retain the Great Seal.

the matter to be discussed, and putting the Great Seal into the purse he proceeded with it to St. James's Palace. Being admitted to the Queen, he laid before her the reasons of his resolution to surrender it. "This," he says, "she strongly opposed, giving it me again at least five times after I laid it down, and at last would not take it, but commanded me to hold it, adding, 'I beg it as a favour of you, if I may use that expression,' on which I took it again; but after some pause told her 'I could not carry it out of the palace unless she would promise me to accept it to-morrow if I brought it,' which I think she did, saying, 'she hoped I would alter my mind.' The arguments on my side, and professions, and the repeated importunities of her Majesty, drew this into the length of half an hour." He adds: "The reason of all this importunity, I guess, proceeded from the new minister not being prepared with a successor to me who would be able to execute the office well; Sir S. Harcourt having chose to be Attorney General, and her not knowing if he would take it; her having been informed I executed the office well; the disreputation it might bring on their late proceedings with as many as had any opinion of my probity or understanding; Mr. Harley and the Duke of Shrewsbury being afraid of the old Tories overrunning them, and willing, for a while at least, to have a little counterbalance if they should disagree: so, much to my dissatisfaction, I returned home with the Seal."

Sept. 23. Resignation of Lord Cowper.

On the morrow he repaired to the palace as the day before, and being introduced into the Queen's closet, said to her, "Madam, I come now with an easier heart before your Majesty than yesterday, since your Majesty was then pleased graciously to accept my surrender if I should continue of the same mind, which, with a deep sense of your Majesty's condescension and kindness I do." *Queen.* "I was in hopes, my Lord, that you would have changed your mind; but I can use no more arguments to persuade you than I did yesterday." Thereupon he fell on his knee, and delivered the purse with the Great Seal into her Majesty's hand, and she accepted it from him. Having offered her some advice about his successor (which she had the day before given him leave to do),

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he withdrew, and he carried with him what was far more precious than the bauble he had rejected—the consciousness of having acted honourably.*

* The Duke of Somerset was the only Whig in high office who *ratted*. When he came to excuse himself to Cowper for being "over persuaded by the Queen to keep his place," we have this conclusion to the entry in the Diary, giving an account of the interview: "On the whole, he appeared to me a false, mean-spirited knave; at the same time, he was a pretender to the greatest courage and steadiness."—p. 50.

# CHAPTER CXV.

## CONTINUATION OF THE LIFE OF LORD COWPER TILL THE ACCESSION OF GEORGE I.

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A. D. 1710. Sept. 25. Lord Cowper retires into the country.

LORD COWPER immediately retired to his house at Colegreen, leaving the new ministers in undisturbed possession of the field, to complete their arrangements and to prepare for the general election now approaching. Here he heard that the Great Seal was put into commission, the Commissioners being Lord Chief Justice Trevor, Mr. Justice Tracy, and Mr. Baron Scrope *, Sir Simon Harcourt declining to accept it till the returns to the House of Commons should show what chance there was of stability to the Tory government. But all doubt upon this subject was soon terminated, the elections running in their favour more than in their most sanguine moments they had ventured to anticipate. The cry of "Sacheverell for ever, and down with the Whigs!" resounded throughout the length and breadth of the land; there had not been such a burst of High Church feeling since the election of Charles II.'s first parliament at the Restoration, and there was now a House of Commons which could be thoroughly depended upon to pass any laws against Dissenters, or to weaken the influence of the monied interest supposed to be still inclined to Whiggism.

Visit to him from the Duchess of Marlborough.

The Ex-chancellor had little consolation from a visit he received from the Duchess of Marlborough, who relieved her bile by giving this character of the Queen: — "She has no original thoughts on any subject: she is neither good nor bad, but as she is made so by others; while pleased, she has much love and passion for those who please; she can write pretty affectionate letters, but she can do nothing else well." †

Libelled by Swift.

In his retirement he was violently assailed by the man who at this very time was treacherously carrying on a double

* Patent Roll, 9 Anne, Part 2. No. 8.

† Diary, 49.

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courtship with STELLA and VANESSA, prepared to break the hearts of both.* Alluding to the Ex-Chancellor Cowper, Swift wrote in the 22d No. of the EXAMINER, published soon after the change of ministry: "This gentleman knowing that marriage fees were a considerable perquisite to the clergy, found out a way of improving them cent. per cent. for the benefit of the church! His invention was to marry a second wife while the first was alive, convincing her of the lawfulness by such arguments as he did not doubt would make others follow the same example. These he had drawn up in writing with intention to publish for the general good, and it is hoped he may now have leisure to finish them." This was followed up in a few days with the celebrated comparison between the new and the old officials — containing in the character of Lord Keeper Harcourt the following calumnious sarcasms on his predecessor: "It must be granted that he is wholly ignorant of the speculative as well as practical part of polygamy; he knows not how to metamorphose a sober man into a lunatic; he is no freethinker in religion, nor has courage to be patron of an atheistical work while he is guardian of the King's conscience."† The first charge to which I have before referred, was supported by the appellation of "Will Bigamy," now applied to the object of it; the second, by an assertion that Lord Wenman, against whom a commission of lunacy had lately very properly issued, was in full possession of his senses; and the third, by the fact that Tindal had dedicated to the late Chancellor a pious work, which was not altogether orthodox. But while Lord Cowper, through the medium of the press, ably defended the policy of his party, he passed over these personalities with contempt.

Bolingbroke's attack on the Duchess of Marlborough in the "Examiner."

About this time appeared St. John's celebrated "Letter to the Examiner," which established his fame as a political writer, and had as great an effect as any of the publications of Swift in bringing about a change in the public mind unfavourable to the Whigs. The unscrupulous author, after

* In perusing the Journal to Stella, it is curious to observe that, in the minute and circumstantial accounts he gives of all his other visits, he studiously and systematically suppresses his visits to Mrs. Vanbomrigh, and his acquaintance with her daughter.

† Examiner, No. 26.

ably pointing out the evils arising from the unnecessary continuance of the war by the late ministers for their own advantage, indulged in a most furious personal assault on the Duchess of Marlborough. He describes the Queen indiscreetly raising one of her servants to be mistress over herself, and, in this single instance, as grieving her subjects. "Instead of the mild influence," says he, "of a gracious Queen governing by law, we soon felt the miserable consequences of subjection to the will of an arbitrary junto, and to the caprice of an insolent woman. Unhappy nation! which, expecting to be governed by the best, fell under the tyranny of the worst, of her sex. But now, thanks be to God! that Fury who broke loose to execute the vengeance of Heaven on a sinful people is restrained, and the royal hand is reached out to chain up the plague." Lord Cowper, although he had resisted the "Dictatorship," thought that he was bound to come forward in defence of his patroness, and, while Addison and Steele attempted to answer the arguments respecting the policy of the war, he, in the form of a letter to ISAAC BICKERSTAFF, took up the cause of the insulted Sarah. The recent change having been brought about through the waiting-maid, Mrs. Masham, he turns with justice upon St. John the accusation of governing the Queen by female intrigue: "Nothing is more probable than that some female attendant of the Queen might be instigated to undermine and supplant a lady on whom the long favour of her royal mistress and the merits of her Lord's services, with her own undisguised zeal for the British liberty, had drawn the envy and hatred of the adverse party; and that this lady having the judgment to discern the persons and principles that prompted such inferior attendant, and the spirit and honesty to do her duty, by remonstrating (with all modesty, yet with all plainness,) against such slavish insinuations of the power of princes as tend, in their natural consequence, to the impairing her Majesty's true title and interest, might easily acquire from the party, so opposed in their agent, the civil appellations of '*insolent woman,*' '*the worst of her sex,*' '*a fury,*' and '*a plague.*' Nothing is more common in courts than calumny; and 'tis no wonder

Her defence by Lord Cowper in the "Tatler."

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those persons should pursue that lady with the utmost malice, who could have the disingenuity to suggest to her Majesty that the wits of the Kit-Cat have taken pains to lessen her character in the world. In a word, what is it indeed that party can be supposed incapable of attempting privately by their principals and agents, who in their public addresses to her Majesty offer her the powers and authority of an eastern sultan rather than of a British queen; and brand with the names of *atheists* and *republicans* all those who assert the principles which put the Crown upon her Majesty's head; and which if they had not been asserted by the Revolution, her Majesty must at this day have been a private subject, notwithstanding that hereditary title which they make the ground and reason of their proffered unlimited obedience?" *

Lord Cowper likewise bestirred himself very actively to defeat the ungrateful and factious efforts soon after made in parliament to ruin the reputation of the "Dictator" himself. Thus he wrote to a leading member of the House of Commons respecting the intrigues then going forward for that purpose:

Private Letter of Lord Cowper to a member of the House of Commons in favour of Marlborough.

Wensd. 19. Dec. 1711.

"S^r^,

"I write this at y^e^ request of the D. of Marlborough, who is apprehensiv (I beleiv with reason) y^t^ y^e^ Report expected to-morrow may mention such facts as may amount to a reflection, without stating other equally true & appearing to y^e^ Com^rs^ w^ch^ would explain & clear y^e^ former; for this reason he is desirous y^t^ you would meet some of y^r^ friends of the h. of Com: at S^r^ R. Onsloes this night, in order to be

* Somers's Tracts by Scott, xiii. 71. 75. Supplement to Swift's Works, i. 13. Sir Walter Scott in his edition of Somers's tracts containing these two letters, says in reference to them:—"This and the preceding tract exhibit the singular picture of two statesmen, each at the head of their respective parties, condescending to become correspondents of the conductors of the periodical writings on politics,—a sure proof of the extensive influence which these writings must have acquired over the mind of the public." Vol. xiii. p. 75. Lord Cowper's gallantry on this occasion called forth from Steele, in the dedication to him of the third volume of the Tatler, the following compliment: "Forgive me, my Lord, when I cannot conceal from you that I shall never hereafter behold you, but I shall behold you as lately defending the brave and the unfortunate."

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apprised of such things as may justly be taken notice of in his behalf, if a fit occasion should be given for it: I am very desirous to express myself more fully to you by waiting on you at any time before that meeting if I should not be troublesom to you, & you would mention time & place: but least that should not be convenient to you, I beg leave to add only this; that what assistance can be given him in this case consistent with Truth and Justice, is not only extremely due to him in respect of his great Merit and Services; but will be of great use to the publick in supporting his Character so necessary to his success & weight abroad, if the war should continue, and for my own part, if it was in my power, I would espouse his case with all the zeall I justly could, as contributing in so doing not only to the publick gratitude but security for the future. I beg pardon for this liberty, assuring you I will alwaies be willing at your comand to serve in any thing I can doe the least good in; & shall be pleased to be so employed. I am with perfect respect,

"Sir,
"Your most faithfull
"humble Servant,
"COWPER."*

Strength of the Whigs in the House of Lords.

The new government was all-powerful in the Commons, but the Whig Peers, with very few exceptions, resisted all solicitation to gain them over, and were rather more numerous than their opponents, although parties were for some time so equally balanced in the Upper House, that it was often doubtful on a division which would have the majority. They were animated by the hope which comes in the place of power and salary, that the "administration could not last."† The infirmities of Lord Somers increasing upon him, Lord Cowper was regarded as the actual leader of the opposition. Waiting on the Queen soon after the meeting of Parliament, she said, "she hoped he would still serve her in the House of Lords." He answered "that he would be sure to do just as he would have done if he had continued in the great place

* From the MSS. of the Earl of Lovelace.

† Diary, 51.

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she had honoured him with." As the policy of her new ministers, both foreign and internal, was directly at variance with that of their predecessors, he cannot be accused of a breach of good faith for the active opposition he offered to them during the remainder of her reign.

Lord Cowper leader of opposition in the Lords.

The first time we have any notice of his efforts in his new capacity of an opposition orator, is in the debates on the conduct of the war in Spain. He appears repeatedly to have addressed the House respecting the disputes between Lords Galway and Tyrawley, and the Earl of Peterborough, who had commanded with such various success in that country, and to have entered at considerable length into military details, as well as questions of general expediency connected with the peninsular campaigns; but the fragments of his speeches which we find scattered about cannot be put together so as to give us any notion of his reasoning or of his eloquence.*

When the negotiations for peace were going forward, Lord Cowper waited upon the Queen as a Peer and Privy Councillor, ostensibly to warn her against improper concessions to France, but (as would seem) really to try to deter her from the scheme known to be in contemplation of turning the balance in the Upper House in favour of the Tories, by a large creation of Peers. We are not informed how he tried to impress her with the unconstitutional nature of such a proceeding, but we find the following entry in the Diary, showing that even the Good Queen Anne considered that Speech was given to enable us to conceal our intentions: "In speaking on this subject, she was pleased to say to me that the House of Lords was already full enough. I'll warrant you I shall take care not to make them more in haste."†

Creation of twelve new Peers.

A few days afterwards twelve new Lords were introduced, and they were asked, "whether they would vote by their foreman?"‡

* 6 Parl. Hist. 955. 963. 966. 971, 972. 975. 977. † Diary, 53.

‡ 6 Parl. Hist. 1059. How much the public mind was affected by the creation of the twelve new peers, may be seen in some degree by an anecdote of the famous actress, Mrs. Barry, who was dying at that time of a fever, and

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The terms of the peace agreed to at Utrecht coming afterwards to be discussed, the Duke of Marlborough represented "that the measures pursued in England for a year past, were directly contrary to Her Majesty's engagements with the allies, sullied the triumphs and glories of her reign, and would render the English name odious to all other nations." The Earl of Strafford said, "That some of the allies would not show such backwardness to a peace as they had hitherto done, but for a member of that illustrious assembly [looking at the Duke of Marlborough], who maintains a correspondence with them, and endeavours to persuade them to carry on the war,—feeding them with hopes that they will be supported by a strong party here." *Lord Cowper.*—"My Lords, the noble Earl who last addressed you did not express himself with all the purity of the English tongue, but he has been so long abroad that he has forgot as well the constitution as the language of his country. According to our laws, it can never be suggested as a crime in the meanest subject, much less in any member of this august assembly, to hold correspondence with our allies, such allies especially as Her Majesty in her speech at the opening of this very session declared to be inseparable from her. But, my Lords, it would be a hard matter to justify—to reconcile with our laws or with the laws of honour or justice, the conduct of some persons in clandestinely treating with the common enemy of our allies, our Queen, and our country."*

June 6. 1712. Debates on the peace of Utrecht.

Speeches of Lord Cowper.

There was no part of the Treaty of Utrecht which gave such dissatisfaction, or which was probably so liable to censure, as that which delivered up the Catalans, who bravely

April 1712. Motion in favour of the Catalans.

in her last delirious hours constantly repeated a composition of her own in blank verse, concluding with the line:—

"Ha, ha! and so they make us Lords by dozens!"

—*Life of Cibber*, p. 134.

* 6 Parl. Hist. 1146. This is a very lively sally, and might screen Marlborough from censure for caballing with the Dutch to defeat the negotiation which the English government had been carrying on for a general peace. But the Ex-chancellor's reasoning is certainly fallacious: a private subject cannot treat with a friendly foreign power, as was universally admitted when Mr. Fox was supposed to have sent Sir Robert Adair to the Empress Catherine; and the government may treat with a public enemy in any way that may be deemed most advisable.

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stood by us, to the vengeance of Philip. Lord Cowper dexterously hit this blot, and moved an address to Her Majesty "that she would be graciously pleased to continue her interposition in the most pressing manner that the Catalans may have the full enjoyment of their just and ancient privileges." The feeling of the House, as well as of the public, on this subject was so strong, that Ministers were obliged to agree to the motion without a division.*

Debate on the peace of Utrecht.

When the grand debate arose on the ministerial motion for an address to Her Majesty "to acknowledge her goodness to her people, in delivering them by a safe, honourable, and advantageous peace with France and Spain, from the burden of a consuming land-war unequally carried on, and become at last impracticable; and to entreat Her Majesty to pursue such measures as she should judge necessary for completing the settlement of Europe," Lord Cowper is said to have spoken as follows,—alluding particularly to an attempt of Lord Clarendon, the mover, to induce the opposition to propose a vote of censure:—"My Lords, this is the most barefaced attempt that ever was made by the present or any other Ministry to secure themselves by endeavouring to get the sanction of this House for their blunders. Are the Ministers themselves conscious that they must be condemned by the public, or why this endeavour at an address to identify us with their imbecility? The Lord that spoke first, acting like a soldier, would, by skirmishing, have drawn on a general engagement; but the troops are too well disciplined to fall into an ambuscade of his laying. I cannot remove my finger from the original of our misfortunes 'the cessation of arms.' We were then told, that if a blow had been struck it would have ruined the peace. Would to God it had done so!"—This was the language of faction, and was so considered, for the address was carried by a majority of 82 to 69. The Ex-chancellor had forgotten his own pacific policy when he was in office, but he tried to defend his consistency by saying, that the terms were worse and the situation of the allies better than at Gertruydenberg, and he

* 6 Parl. Hist. 1332.

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treated with just contempt the importance attached to the renunciation by Philip of the throne of France, when—if there had been any virtue in renunciations, the War of the Succession would never have commenced. In a private conversation he had upon the subject about this time with Harley, now become Earl of Oxford, he said, "I believe if we had made one campaign more in conjunction with our allies, we must have had a much better peace."—*Oxford.* "If we were at the gates of Paris we could not have had a better peace than what we are now to have."—*Cowper.* "We might then have had Strasburg for the Empire, and a better barrier for the Dutch, and in all other respects a better peace."—*Oxford.* "The Emperor would not accept a present of Strasburg, and as for a barrier it signifies nothing, and is all a mere jest." The Diary says,—"the Lord Treasurer's discourse was either obscure and broken hints, or imposing and absurd to the highest degree,"—but I must own I think he has the best of the argument.* The peace of Utrecht might have been more skilfully negotiated, but it was upon the whole a good conclusion of a war, the legitimate object of which had been gained, and its justification is the profound tranquillity which Europe long subsequently enjoyed.

Private conversation on this subject between Cowper and Lord Oxford.

Lord Cowper some time afterwards stood forth to much greater advantage as the defender of religious liberty. The profligate Bolingbroke, not only a confirmed infidel, but zealously resolved by his writings actually to subvert the Christian religion, was now ostensibly the champion of the High Church party, and having fraudulently repealed the act against lay patronage in Scotland, he introduced into the House of Lords the celebrated "Schism Act" for England,—the object of which was utterly to crush the Dissenters. Among other things of a similar character, it enacted, "that no person in Great Britain shall keep any public or private school, or act as a tutor, who has not first subscribed the declaration of conformity to the Church of England, and obtained a licence from the diocesan, on pain of being com-

The "Schism Bill" introduced by Bolingbroke.

* Diary, 56.

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mitted to prison without bail; and that no such licence shall be granted before the party produces a certificate of his having received the sacrament according to the communion of the Church of England within a year last past." We have no farther account of his speech than that he said, "It was a bill of the last importance, since it concerned the security of the Church of England, the best and firmest support of the monarchy; both which all good men, and in particular that august assembly, who derive their lustre from and are nearest to the throne, ought to have most at heart."

Opposed by Lord Cowper.

Lord Cowper answered him, but we are only told that, after professing a sincere regard for the Church, he declared that, in his opinion, this bill would be equally pernicious to Church and State, and that upon those two heads he spoke near half an hour — saying, "Instead of preventing schism, and enlarging the pale of the Church, this bill tends to introduce ignorance, and its inseparable attendants, superstition and irreligion; that in many country towns schools for reading, writing, and grammar, were chiefly supported by the Dissenters, not only for the instruction of their own children, but likewise for the children of poor churchmen; so that the suppression of those schools would, in some places, suppress the reading of the holy Scriptures." He likewise strongly objected to the summary and final jurisdiction given by the bill on matters of such importance and delicacy to "Justices of the Peace—men sometimes illiterate, and frequently bigoted and prejudiced." The other Whig Lords made a resolute stand, but they were all surpassed by the Earl of Nottingham, who had some revenge upon Swift by savagely saying, "My Lords, I own I tremble when I think that a certain divine, who is hardly suspected of being a Christian, is in a fair way of being a Bishop, and may one day, under this act, give licences to those who shall be intrusted with the education of youth."* Nevertheless, with the assistance of the newly created Peers, the bill was carried, having received the preposterous amendment, "that it should not apply to any tutor employed in the family of a nobleman." Lord Cowper signed

* He had been the object of some of Swift's fiercest attacks. See especially "Orator Dismal of Nottinghamshire." Swift's Works, x. 375.

a strong protest against it, containing this, among other unanswerable arguments, "Because the Scots, whose national church is Presbyterian, will not so heartily and zealously join with us in our defence when they see those of the same nation, same blood, and same religion, so hardly treated by us." The bill passed the House of Commons by an immense majority *, and disgraced the statute book till the following reign. It was the last attempt in our parliamentary history to abridge the rights of Protestant dissenters, although disgraceful additions were yet made to the penal code against the Roman Catholics.

Lord Cowper indifferent to natural rights of Roman Catholics and Negroes.

Although Lord Cowper eagerly stood up for the rights of all white Protestants, he not only joined with Lord Somers in inflicting new penalties on the Roman Catholics, but he was not in advance of his age with respect to men with a black skin. These, without regard to their religion, were, he imagined, not to be distinguished from cattle or inanimate merchandise. I find him taking part in the discussions which went forward at this time about the "ASSIENTO Contract," by which England eagerly bargained for the monopoly of carrying on the African slave trade in her own ships to supply the Spanish colonies with negroes — not hinting a suspicion that the traffic could be at all discreditable—but deliberately considering in what proportions the profits of it should be divided between the Queen, the South Sea Company, and private adventurers.† The last speech made by Lord Cowper, in the reign of Queen Anne, was in support of an address "to thank her Majesty for giving to the South Sea Company the quarter part of the ASSIENTO contract, which she was pleased at first to reserve to herself; and that she would be pleased that such other advantages as were vested in her by the said contract, might be disposed of for the use of the public." The address was carried, and was considered rather a triumph to the Whigs. The Queen, in her answer, said, "she would dispose of these advantages as she should judge best for the service;" — which is said to

July 8. 1714.

* 237 to 126. See 6 Parl. Hist. 1351—1358. Stat. 12 Anne, sect. 2. c. 7. Repealed 1718.

† 6 Parl, Hist. 1362.

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have been "very ill relished by the Whig Lords." * On the morrow parliament was prorogued to the 10th of August, and before that day arrived, the Queen was gathered to her fathers.

I find very little of Lord Cowper unconnected with politics during the four years he was in opposition, — between his first and second Chancellorships. Except when Parliament was sitting, he resided at his house in Hertfordshire, and avoided all public meetings as much as possible. The following letter he wrote to Lord Chief Justice Parker, to excuse himself for not waiting upon him at the Hertford Assizes:

"Aug. 11. 1712.

"My Lord,

Lord Cowper's letter to Chief Justice Parker, apologising for not coming to the assizes at Hertford.

"Although during my being in place and since, I have looked on myself as escaped frō the ceremony and business of y^e publick meetings of y^e county: yet I had y^e greatest inclination to have waited on your Lordshp, as well for the pleasure of seeing so good a friend, as to congratulate you on y^e impartiality, courage, and great wisdom w^th w^ch your Lordshp is allowed by persons of all kinds to have conducted yourself in a late party business that came before you, in w^ch y^e world will have me a little concerned. As this consideration, among many others, was on one hand a strong motive for me to have waited on y^r Lordship, so on y^e other, considering I had never done it to any other Judge at an assize, I doubted whether the boundless malice of those who watch our actions might not raise some reflections on it, how groundless soever they would be; and therefore, though I observe y^e scandal office of y^e party is plainly afraid of your Lordsp, yet I chose this way of paying my duty, as impossible to be perverted: and if I have over thought upon this subject, I hope you will ascribe it to my retirement and solitude, w^ch are apt to produce that excess. I am, with perfect truth and sincerity, "My Lord,

"Your much oblidged,

"and most faithfull humble

"Servant,

"COWPER."

* 6 Parl. Hist. 1163.

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Having received from Newton the present of a copy of one of his immortal scientific works, he returned thanks in the following letter, in which he gracefully refers to his patron and predecessor Lord Somers, who had made Sir Isaac Master of the Mint:

Letter from Lord Cowper to Sir Isaac Newton.

"Colegreen, 29 Au. 1713.

"Sr,

"I chose not to acknowledge & thank you for ye receipt of a very valuable present, your book, till I had read it. It became me, I am sensible, to have made you my compliments upon it in ye same language, but my disuse of writing in Latin, considered wth the perfection in wch you do it, (I will venture to say preferably to ye learned Italian, your correspondent,) quite discouraged me. I find you have taken occasion to do justice abroad to the character of that truly great man, my Lord Somers; but give me leave to say, ye other parts of ye book (in which he seems at first sight not to be concerned), are a lasting instance, among inumerable others, of his clear judgment in recomending ye fittest person in ye whole kingdō to that employment, which gave a rise to so learned a correspondence. I am, with all sincerity,

"Yr most oblidged &

"humble Servt,

"COWPER."

Conduct of Lord Cowper at the close of the reign of Queen Anne.

During the violent struggle which took place, in the last days of Queen Anne, between Oxford and Bolingbroke, the former threw out overtures for a coalition with Lord Cowper. They had sat for two or three years in the same cabinet, and, when politically opposed, a private intimacy had to a certain degree been kept up between them, insomuch that the Ex-chancellor had acted as arbitrator in a dispute between the Harley family and the Pelhams *; and the Whigs might

* The following is the commencement of his letter to Lord Pelham on that occasion: —

"My Ld,

"I am very sensible of the great honour done me in your Lordsps naming, and my Ld Treasurers readily approving me as a fit person to make a scheme for an amicable acomodation of the matters in difference between yr Lordsp and

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now have been inclined to give him some support, being convinced that he was a friend to the Protestant succession, while Bolingbroke was plotting to bring in the Pretender. But this negotiation was suddenly broken off by Oxford being deprived of the Treasurer's staff, and Bolingbroke being empowered to form a new administration — at the head of which he meant that he himself should be placed, while he continued foreign Secretary.

Queen's last illness.

Instantly followed the news of the Queen's dangerous illness, — of the abrupt intrusion, into the Cabinet while sitting, of the Dukes of Argyle and Shrewsbury, — and of the delivery to the latter of the Treasurer's staff by the dying hand of the Queen. On the summons for all Privy Councillors to attend, Lord Cowper repaired to Kensington along with Lord Somers, and joined in directing preparations to be made for the accession of the new Sovereign.

his family. I am very zealously inclined to endeavour to doe you both this service — your Lordsp for reasons I need not mention to you, and my Ld. Tr for the favours He alwais shewed me when wee were in ye service together, and especially at ye time of the late changes, wch, however wee differ in Politicks, I ought to remember whenever I have an opportunity of doing him any service without detriment to the publick."

# CHAPTER CXVI.

## CONTINUATION OF THE LIFE OF LORD COWPER TILL HIS FINAL RETIREMENT FROM OFFICE.*

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A.D. 1714.

Accession of George I.

As soon as the Queen had expired, on the morning of Sunday the 1st of August, the Council assembled, attended by Baron Kreyenberg, the Hanoverian resident. According to the Regency Act, seven great public functionaries† were authorised, on the demise of the Crown, to act as Lords Justices for the administration of the government, along with such others as the Princess Sophia, or her son after her, should name in a sealed paper, of which one copy should be deposited with the Archbishop of Canterbury, another with the Lord Chancellor, and a third with the Hanoverian resident at the English Court. The three copies of the nomination by the Elector of Hanover, executed on the death of his mother, were now produced, opened, read, and found to correspond,—and thereby Lord Cowper was one of eighteen added Lords Justices. There were not, and from the nature of the case there could not be, any instructions for their conduct, and, subject to the statutable limitation of their authority, that they should not assent to a repeal of the Act of Uniformity, they were left for some time in the uncontrolled exercise of the prerogatives of the Crown.

Lord Cowper a Lord Justice.

The added Lords Justices of the Whig party greatly outnumbered the Tories and those entitled to act by virtue of office. In their proceedings they were chiefly guided by Lord Cowper, although he was lowest in rank of the whole

* Lord Cowper's Diary ceases at the accession of George I., the last entry being dated 21st Sept. 1714, but fortunately a charming Diary of the second Lady Cowper, beginning at this time, is preserved. It remains in MS., but it well deserves to be printed, for it gives a more lively picture of the Court of England at the commencement of the Brunswick dynasty than I have ever met with.

† The Archbishop of Canterbury, the Lord Chancellor, the Lord President of the Council, the Lord Treasurer, the Lord Privy Seal, the Lord High Admiral, and the Lord Chief Justice of the King's Bench.

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number. Their first measure was to appoint Addison their secretary, and to order all despatches directed to the Secretary of State to be delivered to him. This, I am afraid, was meant as an insult to Bolingbroke, and he was now obliged to stand at the door of the Council Chamber with his bag and papers under his arm, waiting to be called in and to receive orders from those whom a few days ago he had expected to command.*

Removal of Bolingbroke.

No change took place in the offices of the government till George's arrival from Hanover, except the removal of Bolingbroke, on the ground that he had notoriously attempted to defeat the Protestant succession. In obedience to a royal mandate received from Herenhausen in the end of August, Shrewsbury, Somerset, and Cowper, three of the Lords of the Regency, abruptly took the Seal of Secretary of State from him, and locked the doors of his office. He had been professing his readiness devotedly to serve the new dynasty, and he was not without hopes of being taken into favour on account of his influence with his party. The fallen Minister felt the blow severely, but attempted to conceal his personal mortification. He pretended to be much hurt at the manner of his removal, which, notwithstanding the usual good nature and gentlemanly demeanour of Lord Cowper, seems to have been marked by studied rudeness; but thus he wrote to Atterbury, who had been willing to head a procession in his lawn sleeves to proclaim King James III., "To be removed was neither matter of surprise nor of concern to me. But the manner of my removal shocked me for—at least two minutes. I am not in the least intimidated from any consideration of the Whig malice and power; but the grief of my soul is this—I see plainly that the Tory party is gone."

The King did not reach England till the 18th of September. In the mean time, notwithstanding the dismissal of

* There was unfortunately a striking contrast between the two functionaries in point of aptness as well as honesty. Mr. Secretary Addison being desired to write an official notice of the Queen's death, he was so distracted with the choice of words, and so overwhelmed with the importance of the crisis, that at length the Lords Justices losing all patience at his bungling, summoned a common clerk, who, superseding the author of Cato, readily did what was required in the usual form of business.

one leader who had made himself so obnoxious, it was matter of conjecture "which political party he would favour," and many supposed that he would try to form a balanced cabinet from both. But as soon as he had landed at Greenwich, his demeanour showed that, either from gratitude for past services, or from the conviction that he could only have a strong government by exclusively employing those who had always appeared well affected to his family, it was evident that a complete ascendency was to be given to the Whigs. The King would take no notice of the Tory Lord Chancellor, who was strongly suspected of being a Jacobite, but he was exceedingly civil to Lord Cowper and Lord Somers.

The King declares for the Whigs.

Two days after, Lord Townshend, who had been appointed Secretary of State, fortified by a royal warrant, demanded somewhat abruptly the Great Seal from Lord Harcourt, and Lord Cowper was immediately summoned to receive it.* He gives in his *Diary* the following interesting account of his interview on this occasion with the new Sovereign and the Prince (afterwards George II.):—"I waited on K. accordingly at St. James's in the closet, where the Q. used to receive me. The purse was lying in the window, which the K. gave me, speaking to me in French very shortly,—'That he was desirous I should be restored to the charge of the custody of the Great Seal, he having been well satisfied with the character he had heard of me;' and I answered in English,—'That it was now just four years since I surrendered the same into the hands of her late Majesty; that she was so good as to press me to keep it, but that I refused, believing that she was going into measures which would raise France again and ruin the common cause, and such I could not bear any part in; that I now received it again from his Majesty with the utmost gratitude, and would serve him faithfully, and, as far as my health would allow, industriously.' The Prince was in the outward room, and made me a very handsome and an hearty compliment both in French and English, and entered very kindly into talk

Great Seal delivered to Lord Cowper.

Lord Cowper's interview with George I.

* Sept. 21. 1714.—His Ma[tie] sent for the G[t] Seal of G[t] Britain from Simon L[d] Harcourt, and the same evening delivered it to W[m] L[d] Cowper, with the title of L[d] Chancellor of G[t] Britain.—*Cr. Off. Min.*

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with me. Among other things, speaking of the Princess's* coming,—'I wished she was here while the weather was good, lest she should be in danger in her passage. He said, 'Providence had hitherto so wonderfully prospered his family's succeeding to the Crown in every respect, that he hoped it would perfect it, and believed they should prosper in every circumstance that remained.'"†

Next day a council was held, and Lord Cowper was in due form sworn in as Lord Chancellor.‡ On the 20th of October he assisted at the Coronation, and was treated with marked distinction by his new master. § Three days after began Michaelmas Term, when, after a most splendid procession from the Middle Temple, he was installed in the Court of Chancery in Westminster Hall. ‖ During the four years he had been out of office and in active opposition, he had occasionally sat at the Council table when judicial cases were to be decided there; he had regularly attended the hearing of appeals and writs of error in the House of Lords; he had seen MS.

Lord Cowper as an Equity Judge when Chancellor the second time.

* Afterwards Queen Caroline.

† Diary, 57, 58.

‡ London Gazette.—"St. James's, Sept. 22. 1714. His Majesty having been graciously pleased to deliver the Great Seal of Great Britain to the Right Hon. William Lord Cowper, his Lordship this day took the oath of Chancellor of Great Britain."

§ Lady Cowper gives a very amusing account of the feelings and deportment of the different parties at this ceremony: *e. g.*, "One may easily conclude that this was not a day of real joy to the Jacobites: however, they were all then looking as cheerful as they could, but very peevish with every body that spoke to them. My Lady Dorchester stood underneath me, and when the Archbishop went round the throne demanding the consent of the people, she turned about to me and said, 'Does the old Fool think that any body here will say NO! to his question, when there are so many drawn swords?' There was no remedy but patience; and so every body either was pleased, or pretended to be so."

‖ 23d Oct[r]. 1714.—"His Majesty having received the G[t] Seal of Great Britain from the Rt. Hon[ble] Simon L[d] Harcourt upon the 21[st] Sep[t]. A.D. 1714, and having been pleased to deliver it the same day at his palace of St. James to the Rt. Hon[ble] W[m] L[d] Cowper, with the title of Lord Chancellor of Great Britain, which his Lordship formerly enjoyed, his Lordship, the 23[rd] of Oct[r]. following, came from the Middle Temple Hall to the Chancery Court in Westminster Hall, accompanied by the Earl of Nottingham, L[d] President, the Earl of Wharton, L[d] Privy Seal, the Dukes of Bolton, Argyll, and Roxburgh, the Earl of Halifax, 1[st] L[d] Commissioner of the Treasury, the L[d] Viscount Townshend, Secretary of State, M[r] Walpole, the Judges, and several other officers and persons, and in their presence did then and there take the oaths appointed to be taken by the 1[st] of Will. and Mary, and the oath of L[d] Chancellor, the Ma[r] of the Rolls holding the book, and the Clerk of the Crown reading the said oaths." —Roll, 1714—1727.

He was soon after gazetted as Lord Lieutenant and Custos Rotulorum of the County of Hertford.

notes of the judgments of his successor, and he had found time to revive his knowledge of our institutional writers. He, therefore now presided in the Court of Chancery with fresh lustre, and aspiring after something more than the glory of avoiding difficulties, of not getting into scrapes, and of jogging on without any very loud complaints being made against him in parliament, he secured to himself the respect of his own generation, and a lasting reputation with posterity.

Lord Cowper's memorial on the state of parties presented to Geo. I.

For a considerable time he enjoyed the entire confidence of the Sovereign. He had drawn up for his Majesty's perusal, to influence him in favour of the Whigs, a very clever statement, entitled, "An impartial History of Parties." I am enabled to lay this paper for the first time before the public, as an Appendix to the present Memoir, and it must be perused with the most lively interest. In spite of his professed impartiality, the writer undoubtedly betrays a leaning to his own party, but he communicates a great deal of valuable historical and constitutional information with captivating clearness. Having given an account of the principles and proceedings of the Whigs and the Tories, from the origin of the two parties, he sums up with an air of great candour: "I shall only add, that 'tis not to be doubted but your Majesty's known goodness and experienced wisdom will necessarily incline you to such moderate counsels as will render you King of all your divided people. But I humbly conceive it not possible so to distribute your royal favour, but that one or other of the parties will appear to have a superior degree of trust reposed in them; and if such a perfect equality was possible to be observed, perhaps it would follow that an equal degree of power, tending at the same time different ways, would render the operations of the goment slow and heavy, if not altogether impracticable. It remains, therefore, in my humble opinion, for your Majesty to determine which of these shall have the chief share in your Majesty's confidence, as most likely to support your title to the crown with the greatest zeal and most untainted affection to it. For as to their power to do it, give me leave to assure your Majesty, on repeated experience, that the parties are so

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near an equality, and the generality of the world so much in love with the advantages a King of Great Britain has to bestow, without the least exceeding the bounds of law, that it is wholly in your Majesty's power, by showing your favour in due time (before the elections) to one or other of them, to give which of them you please a clear majority in all succeeding parliaments."

This, in its original language, would have been a sealed book to George I.; but a translation of it into French, by Lady Cowper, was put into the hands of Baron Bernstorff, the Hanoverian Minister, to be submitted to his Majesty at an auspicious moment, and was supposed to have strongly confirmed the royal prepossessions in favour of the Whigs, and of their leader, Lord Cowper.* Till the unhappy differences arose in the royal family, which gradually undermined his influence, he was the King's chief counsellor in the internal government of the country.

Lord Cowper's appointment of Judges, and promotions in the law.

His first service in the new reign was to advise his Majesty respecting Judges to be retained, and to be dismissed. According to the understood state of the law, which was not without its advantages, although George III.'s alteration of it, at the expence of his successor, must be considered on the whole an improvement, they were all removable on a demise of the crown.† Lord Cowper presented a scheme for all the

* Lady Cowper, in her Diary under 24th Oct. 1714, says she presented it to Baron Bernstorff when he announced to her that she was to be *une Dame du Palais*: "I gave him, at the same time, a treatise (which I had transcribed and translated for my Lord) in French and English, to give the King." Although of a Tory family, Lady Cowper, after her marriage, became a very zealous Whig, and corresponded with the Hanoverian Princess, afterwards Queen Caroline. We may judge of her activity while the Whigs were in opposition during the four last years of the reign of Queen Anne, by an anecdote she mentions in her account of the coronation of George I. She had been shoved out of her place in the Abbey by the Tory Lady Nottingham, and forced to mount the pulpit stairs: "However, her ill-breeding got me the best place in the Abbey; for I saw all the ceremony which few besides did. The Lords that were over against me seeing me thus mounted, said to my Lord [Chancellor], that 'they hoped I would preach;' to which my Lord, laughing, answered, that he believed I had zeal enough for it, but that he did not know that I could preach; to which my Lord Nottingham answered, 'No, my Lord, indeed you must pardon me, she can, and has preached for these last four years such doctrines as, had she been prosecuted in any court for them, your Lordship yourself could not defend.'"

† "A Judge," said Dr. Johnson, "may become froward from age. A Judge may grow unfit for his office in many ways. It was desirable that there should be a possibility of being delivered from them by a new King."— Bos. ii. 365.

changes and promotions in the profession of the law, framed with great discernment, moderation, and fairness, which was carried into effect very much to the advantage of the community.*

Scheme for remodelling Westminster Hall.

* This is a curious document, and to lawyers will be found very interesting:

"JUDGES.
King's Bench.
Lord Chief Justice Parker.
Sr Littleton Powis.
Mr Justice Eyre.
Sr Thomas Powis.

"This Court has ye great influence on Corporations. The 2 Brothers generally act, in those maters, in oposition to ye Ch. Justice and Mr. J. Eyres: therfore it would be of great use if one of their places was supplyd by another fit man.

"Sr Littleton, ye elder Bro:, is a man of less abilitys and consequence, but blameless. Sr Tho. of better abilitys, but more culpable; having been Attorny General to ye late K. James to his abdication, and zealously instrumental in most of ye steps wch ruind that Prince, and brought those great dangers on the kingdom. Besides having frō that time practisd the Law wth great profit, He lately, when ye Hopes of ye Pretender's party were raisd, laid down his practise of near 4000*l.* an: to be a Judge, not worth 1500*l.* an: for no visible Reason, but if ye Pretender had succeded, he would have made, and that very justly, a merit of this step.

"If either of these be remov'd, I humbly recom̄end Serjeant Prat, whō the Ch. Justice, Mr J. Eyres, and I beleive every one that knows him, will approve.

"Comōn Pleas.
Ld Ch. J. Trevor.
Mr Just. Blencoe.
Mr Just. Tracey.
Mr Just. Darmer.

"Ther seems to be no objection to the three last. The first is an able man, but made one of the twelve Lords, wch the late Ministry procur'd to be created at once (in such haste, yt few, if any, of their Patents had any Preamble, or reasons of their creation), only to support *their Peace*, wch the House of Lords, they found, would not without that addition. From that time, at least, he went violently into all the measures of that ministry, and was much trusted by them; and when they divided, a little before the Queen's death, He sided wth Ld Bolingbr., and for so doing, 'tis credibly said, was to have been made Ld President. Many of ye Lords think His being a Peer an Objn to his being a Judge; because, by ye constitution, ye Judges ought to be *assistants* to the House of Lords, wch they can't be, if a *Part* of that Body. Ther is but one example known of the like; wch is that of Ld Jefferys, Ch. Just. of the King's Bench, and after Chancellor to K. Ja. ye 2nd.

"'Tis natural to think, ye other Judges stomach ye distinction, while He is among them: and tis said yt ye suitors dislike ye difference they find in his behaviour to them since he had this distinction. He is grown very wealthy. If it be thought fit to remove him, Sr Peter King, Recordr of the City of London, I should humbly propose as fit to succeed him.

"Exchequer.
Ld. Ch. Baron.——Vacant.
Baron Berry.
Baron Price.
Baron Smith, Ch. Baron of ye Exchequer in Scotland also.
Baron Banister.

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The Chancellor's political functions occupied a considerable portion of his attention; for on him lay the chief burden of domestic administration, Lord Somers being almost entirely disqualified by growing infirmities from interposing in public business. A dissolution of parliament taking place, the elections ran strongly in favour of the government, and the returns showed a decided majority in the House of Commons for the Whigs. I must own, that I think they greatly abused this change of fortune by indiscriminately seeking to bring their political rivals to the block.

At the meeting of the new parliament a considerable em-

"The general opinion of Westminster Hall is, y[t] Mr. Dodd, an antient Practiser of this Court, is the fittest person to supply the place of Ch. Baron now voyd, and I must confess experience is requisite for this post above all others.

"L[d] Halifax recomends his Bro: S[r] James Montague, who has been Attorney General to y[e] late Queen; and my partiality to gratify my Lord's desires, would incline me to wish he may succeed.

"But if Mr. Dod should be thought more proper, Perhaps S[r] James M. would be pretty well content to be a Baron at least for the present.

"W[ch] might be effected by removing Baron Banister, a man not at all qualify'd for his place (w[ch] he owes to y[e] friendship of y[e] late Chancellor), as any Lord will inform yr M.

"If S[r] Ja: Montague be made Ch.-Baron, and your M. should be pleased to let S[r] T. Powis be remov'd gently out of the King's Bench, He would supply y[e] place of B. Banister with more abilitys, and not be capable of doing much hurt in that station, as he may in his present.

"As I desire all possible inquiry may be made into any of the particulars above-mentioned: so I humbly request this Paper may not goe out of y[r] Majesty's hand, nor be shewed to more then of necessity.

"Of your M.[s] Council learned in the law.

"I beg leave to mention at this time only y[e]

Attorney General, and
Sollicitor General.

"They who are at present in your Majesty's service generally incline to remove both, and put in their places

S[r] Peter King, above mentioned, and
M[r] Lechmere.

But they are so near rivals they will never agree, y[e] one to act under the other in those stations. W[ch] is another reason why S[r] Peter may be more fitly dispos'd of as above said, in y[e] Comon Pleas.

"The Attorney General, S[r] Edw. Northy, is an excellent Lawyer, and a man of Great abilitys in y[e] Law, a moderate Tory, and much respected by that Party, and no further blameable, then by obeying those, who could comand him, if He kept his Place.

"If He should not be remov'd, tis reasonable to think Mr. Lechmere would accept of being Sollicitor under him: He being old and infirm, and ther being no competition between them, as to Seniority or Preheminence in their Profession.

"Ther may be other expedients thought of to salve any difficultys that may arise on this scheme, but tis needless at present to trouble y[r] M: therewith."

The removal, for political reasons, of Trevor, admitted to be a good Judge, was a strong measure. The other changes certainly appear for the public service.

barrassment arose from the King's entire ignorance of our language. William, though he might be detected by his accent to be a foreigner (which had added much to the unpopularity caused by his reserved manners) spoke and wrote English with great fluency and correctness; and Anne's graceful delivery of her speeches (scarcely excelled by what we ourselves so warmly admire) had charmed all ears and hearts; but George — having been in the direct succession to the throne of England ever since the death of the Duke of Gloucester and the act of settlement, a period of fourteen years — had such a dislike of all sorts of learning, that he had not acquired the first rudiments of the language of the country he was to govern, — while it was well known that the Pretender, the son of James II., who had been driven from his native country in early infancy, although he obstinately refused to adopt the national religion, spoke the English language as if he had never seen a foreign shore, and could converse with all his countrymen inclined to take up his cause in the thrilling accents of genuine Anglicism. George is reported, when seated on the throne, to have uttered the words following; but, notwithstanding all the drilling to which he submitted, it must have been a very awkward, if not a ludicrous, exhibition: "My Lords and Gentlemen, I have ordered my Lord Chancellor to declare to you, in my name, the causes of calling this Parliament." Then Lord Cowper, going through the form of conferring with his Majesty, although they had no language in common in which they could converse, thus addressed the two Houses: "My Lords and Gentlemen, his Majesty hath commanded me to declare to you the causes of his calling this Parliament, as they are contained in this his Majesty's most gracious speech, now delivered into my hands by his Majesty from the throne. '*My Lords and Gentlemen, this being the first opportunity that I have had of meeting my people in parliament since it pleased Almighty God, of his good Providence, to call me to* THE THRONE OF MY ANCESTORS,' " &c.

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George I.'s ignorance of English.

His speech to Parliament.

No personal blame could be imputed to George for this discourse; but I think Lord Cowper is chargeable with some

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bad taste and some bad feeling displayed by it. Not only the Jacobites, but Constitutionalists, must have been a little inclined to sneer at the *ancestral rights* of the new dynasty, considering that preferable claims, according to the rules of descent, might be set up not only by the son of James II., but by the descendants of Charles I., through the Princess Henrietta, and by all the many children of the children of the Queen of Bohemia, born before the Princess Sophia. It would have been more graceful, therefore, to have rested on his Majesty's undoubted title by act of parliament, and the will of the people. The reflections which followed on the peace of Utrecht, and the measures of the last years of the late reign, were undignified if not unfounded, and showed George as the head of the Whig faction rather than the monarch of a mighty nation.

Bolingbroke's last speech in Parliament.

Bolingbroke, addressing a house of parliament for the last time, made a noble stand for his party, and delivered a speech which excited universal admiration, being superior to all past or contemporary oratory in the English senate; but, like all his other speeches, it has irrecoverably perished. We only know that he vindicated the memory of the late Queen, which he maintained was now wantonly assailed, and that he moved an amendment to the address, in the clause about "*recovering* the reputation of the kingdom in foreign parts;" to substitute the word "maintain" for the word "recover;" saying that, "having been one of the late Queen's servants, if he had done any thing amiss, he would be contented to be punished for it; but that he thought it an unjust fate to be censured and condemned without being heard."

He is answered by Lord Cowper.

Lord Cowper answered him, contending that "they did not condemn any particular person, but only the peace in general, because they felt the ill consequences of it; that they who advised and made such a peace deserved indeed to be censured, but that the words in the address being general, no private person was affected by them; and that the alteration of the word 'recover' into that of 'maintain' would signify no more towards the justification of the guilty, than the word

'recover' towards the condemnation of the innocent."* The amendment was negatived by a majority of 66 to 33. CHAP. CXVI.

Impeachments for high treason.

A similar address being carried in the Commons by a majority of 244 to 138, the victory was followed up by moving impeachments for high treason against the three chief leaders of the late government, the Earl of Oxford, Viscount Bolingbroke, and the Duke of Ormond. The last two fled (I think) injudiciously and unnecessarily. Evidence might have been given that they had corresponded with the Court of St. Germaine's; but if this was treason in the eye of the law, it was not an offence for which the public could have endured to have seen noblemen's heads chopped off, and at any rate the Duke of Marlborough, and some of his Whig associates, were *in pari delicto.*† — The Chancellor had no difficulty in passing bills of attainder against the fugitives.‡

Articles against Oxford.

But the prosecution of Oxford caused much embarrassment to his enemies, and drew down no little disgrace upon them. Twenty-two articles of impeachment were exhibited against him. These contained no charge of aiding the exiled royal family, — and on his behalf it was contended, that, if well founded in point of fact, none of them amounted to high treason, — so that the accused party was entitled to be liberated on bail, and to sit within the bar on his trial. Having carefully perused the articles, I can find in them nothing of treason. If the peace of Utrecht were to be again discussed after a vote of approbation by two parliaments, it could not, however

* 7 Parl. Hist. 42—46.

Bolingbroke's flight.

† Bolingbroke gave as a reason for flying, that "his contempt for Oxford was so great he could not endure concerting with him measures for their common defence." The manner of his flight was characteristic. Having used a tone of calmness and firmness, saying that "he found by experience he could be unfortunate without being unhappy," and having announced his resolution to meet his accusers, he appeared at Drury Lane Theatre, and having, according to the custom of the time, ordered another play for the next night, he disguised himself as a servant of La Vigne a messenger of the King of France, set off to Dover, and reached Paris undiscovered,— where he soon became Secretary of State to the Pretender. — His real motives for flight were despair of ingratiating himself with the new dynasty, and the hope of a restoration. Lady Cowper says in her Diary, " At the coronation my Lord Bolingbroke for the first time saw the King. He had attempted it before without success. The King seeing a face he did not know, asked his name when he did him homage, and he hearing it as he went down the steps from the throne turned round and *bowed three times down to the very ground.*"

‡ Despatch from Lord Townshend and Secretary Stanhope, 2d Nov. 1716. 2 Coxe, Sir R. Walp. 70.

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blameable, be said to have been a "compassing of the Queen's death," or "levying war against her within her realm." The effort to obtain Tournay for the French was indeed gravely contended to be "an adhering to the Queen's enemies," within the meaning of the statute of Edward III.; but this was only by confounding all legal distinctions, and violating the plainest dictates of common sense. Indeed we now know that the very cabinet who directed the impeachment against the Earl of Oxford, soon came to the resolution "that the charge of high treason should be dropped, it being very certain that there is not sufficient evidence to convict him of that crime, but that he should be pushed with all possible vigour upon the point of misdemeanour." Yet when a motion was made in the House of Lords by Lord Trevor, that the opinion of the Judges should be taken, whether the charge contained in the articles amounted to treason, Lord Chancellor Cowper, showing how a mixture of judicial and political functions may cloud the clearest understanding, strenuously contended that some of the articles, if proved, amounted to high treason, "and challenged all the lawyers in England to disprove his arguments." The only plausible objection to the motion was started by Lord Nottingham, who urged that it might turn out to the hurt of the accused; for if the Judges on this preliminary consultation should say the charge amounted to treason, he would stand prejudged before he was brought to his trial. The motion was negatived by a majority of 84 to 52. Oxford was then allowed to address the House, urging, "that he was taking leave of their Lordships perhaps for ever." He seized upon the only real ground of criminality alleged against him, which as "a high misdemeanour," we should say he could not satisfactorily answer — the secret order sent to Ormond for a cessation of hostilities — which he justified by the Queen's immediate command, — and (so unsettled was even now, in the third reign after the Revolution, the doctrine of ministerial responsibility) he said with sincere confidence :—"If ministers of state, my Lords, acting by the immediate commands of their sovereign, are afterwards to be made accountable for their proceedings, mine may one day be the case of any member of this august assembly."

Oxford's defence.

In spite of a touching appeal to their justice and their mercy, he was committed to the Tower, where he lay two years without being brought to trial; and it is smartly observed by a noble historian, that "the proceedings against him seemed to partake of his character, and could scarcely have been more slow and dilatory had they been directed by himself."*

Rebellion of 1715.

In the mean time the Rebellion broke out in Scotland, and Lord Cowper, alarmed by the supineness of his colleagues, addressed the following letter to the King:—

"Sire,

Lord Cowper's remonstrances on the supineness of his colleagues.

"I would not trouble your Majesty in this manner, but on some very great crisis, as I take the present to be, when I should desire not to be in the least mistaken by a sudden interpretation. On your Majesty's receiving certain advice from Scotland of an open rebellion not only begun but declared there, and even hostilities commenced, I own my concern to find nothing moved to be considered, but whether circular letters should not go to the Lord Lieutenants, &c., to seize Papists and nonjurors in the North of England.

"Your Majesty's Attorney and Solicitor General were both of opinion with me, that the law doth not warrant the import of such letters; the Chief Justice did not give an opinion either way. Two or three precedents were found in the Council Books of such letters, which were indeed strains of the law, in hopes of some good effect, which always failed. However, the most of your Majesty's Council were for making an experiment once more, and to that I refer myself, to have it seen what fruits it will produce when the returns come to be made, if any.

"It was agreed that the method I preferred, of learning the names of all the great Papists and nonjurors in the North, and taking them up, and securing them by warrant of six Privy Councillors, or a Secretary of State, in virtue of a plain law made on purpose this session, should be likewise

* Lord Mahon's History of England, vol. i. p. 414.

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practised. And lest the using of the first insufficient remedy should, as is usual, slacken the making up of the true, I humbly beg your Majesty to remind your servants that this be forthwith and effectually done, since the former method will take up the inconsiderable people, if any, and be longer in doing also.

"But what seems to me to be the more important and natural consideration on this news from Scotland is:— whether the forces now in Scotland, or going thither, are probably sufficient to stop the march of the rebels, and if not, whether the consequences of that are not bad enough to require some augmentation, wherever it can be had, without exposing too much this part of the kingdom.

"As to the first: I think your General or Secretary at War should state plainly before your Majesty in the Cabinet, what number of effective men are now, or will be in a short time, of your forces in the field, and then by comparing that number with what the rebels will probably march, or your Majesty by the next advices may hear they have got together, a judgment may be formed on that point. If your Majesty's forces are found insufficient to stop the rebels, I humbly think your troops there should be immediately augmented by all means consistent with the not leaving this part of the kingdom so unguarded as to invite an insurrection or invasion to be made here. For it seems certain that if any disgrace befall your Majesty's troops in Scotland, insurrections will immediately follow in England in many places. On the other hand, if the rebels get no advantage in Scotland, my conjecture is, there will be no considerable rising in England. And I take it to be much safer to prevent commotions in England by securing that the rebels shall make no progress in Scotland, than it will be when any success of the rebels in Scotland shall have made many insurrections to break out in England, to find means to suppress them.

"The Scotch magnify their danger something, and perhaps press for more assistance than can be reasonably spared from home; but I beg leave to assure you, I cannot but observe the prevailing inclination here is to supply the forces there

too sparingly; and as, on the one hand, it would be extremely wrong to draw the bulk of your Majesty's forces to that end of your kingdom, so, on the other, the not making the Duke of Argyle strong enough to secure himself against a defeat, or a necessity of retreating, or of letting them go by him towards the South, will thoroughly engage England in a civil war of which none can answer for the consequence.

"And therefore I humbly advise that this great point should be thoroughly stated and considered by all such as have the honour at any time to advise your Majesty."

Afterwards when a foreign invasion was seriously threatened to put the Pretender on the throne, Lord Cowper thus again appealed to him who seemed about to be driven from it: —

"Sire,

"I humbly beg leave to lay a few observations before your Majesty in this great conjuncture of the intended invasion, — not with the least view of traducing any one's conduct, but purely that, if any errors be committed, as short an end may be put to 'em as possible, and the like avoided for the future.

"The fidelity of all who are principally intrusted by your Majesty, is unquestionable. But if your Majesty's affairs and those of the public are in the opinion of any of us like to be hazarded in so dangerous a crisis as the present, by any sort of failing or mistake among us, I think it his duty to lay the matter clearly before your Majesty, whose supreme station and power in the state set your judgment above being influenced by considerations which ought not to have any share in the public councils, and which yet the best of your subjects may be more or less liable to.

"Not to delay your Majesty with a longer preface, I cannot but think on this important occasion we have already fallen into two very great, I may truly say fundamental errors, either of which may prove, though I trust they will not, destructive to your Majesty's interest in this kingdom, and consequently to that common cause of which your Majesty is, and will every day appear more conspicuously, the head.

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"The fact is, the not quelling immediately on their first appearance those rebellious tumults which have been raised on purpose to encourage, indeed invite over, the invasion, and without which being continued and repeated in the manner they have been, the invasion had never been undertaken. It is a clear and natural inference for the Pretender to make, that if your Majesty's administration has not vigour enough to extinguish these commotions, but only to keep 'em down in one place while they break out in another, much less will you be able to deal with the discontented party when their King shall appear among 'em with officers, money, and arms from abroad, and persons of quality shall also publicly join with them.

"This obvious inference from the experiments they have made of the strength and zeal of their party, is in my humble opinion the main cause why they now undertake to set up this Pretender, rather than on your Majesty's first accession to the Crown, when your Government was not so well settled as it is.

"On the other hand, I take it to be evident that if the first commotions had been instantly extinguished, and others discouraged and prevented, such an instance of the weakness of the Pretender's party and vigour of your Majesty's government had effectually hindered any designs abroad from taking place to disturb the peace of your Majesty's reign. Your Majesty by this time will naturally inquire by what means might this have been effected, and if by any lawfully, why were they not made use of? The affair was too big for your civil magistrates.

"The militia of the counties was quite out of order, so that no remedy remained but for your Majesty's troops to countenance and assist such of your subjects as voluntarily took arms in defence of your Majesty's government, and of the public peace. These together have been able to disperse the rebels, and make some degree of quiet, wherever they have appeared; but in so gentle a manner, that the disaffected rabble have rather been encouraged thereby to try their fortune in another place, finding, by experience, that where the troops come, 'tis but dispersing for the present, and they are safe

as if nothing had been done. The public peace can never be maintained in this method, while the disaffected endeavour to disturb it. But your Majesty has not, nor when the army is completed, never will have troops sufficient for every place where disturbances may happen, if they are merely to look on; and I beg leave to say, with some assurance, that such is the rage and zeal of the adverse party, that no way is left to preserve the public quiet, but the making some one or more of their essays to a general rebellion so very exemplary, as to deter and to prevent many others which would otherwise be undertaken. I can only say, that no man has naturally a stronger aversion to any thing severe than myself; but where a seasonable use of some severity may probably prevent the extensive cruelties and miseries of a civil war, the inclination of the best natured ought to be made to give way to what reason and the public safety so strongly demand."

Passing of the Riot Act.

The Lord Chancellor was still thought too much to advocate military government; and the Riot Act was passed, making it a capital offence for any twelve persons to continue together an hour after they have been ordered by a magistrate to disperse; but this was perhaps a harsher law than ever was proposed in the time of the Stuarts*, — and though not abused in practice, it brought great obloquy upon the new dynasty.

Instructions to the Judges going circuit.

Some reliance was placed upon the loyal charges to be delivered by the Judges on their circuits. The ancient custom of the Chancellor haranguing them on their duties in the Star Chamber, had been laid aside since the breaking out of the civil war in the preceding century; but Lord Cowper now sent to each Judge a copy of the following "ORDERS:"

"His Majesty, understanding that you are about to go your several circuits, and being well assured that your known learning and integrity, together with the authority you are vested with, must necessarily give you the greatest weight in the counties to which you are sent,—

* Bl. Com. vol. iv. p. 142.

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"Has commanded me to mention to you a few particulars relating to that very important service you are so near entering upon:

"His Majesty expects that as well in your charges as otherwise, you will lay hold on this occasion to cultivate in the minds of those you shall have occasion to speak to, a good affection and reverence toward his Majesty and his government: (your own prudence and impartial administration of justice, will not contribute a little to this good end.)

"More especially it is his Majesty's pleasure, that to the utmost of your power you excite in his subjects a just abhorrence of the intended invasion, and of that implacable and ungrateful faction, by whose instigation and encouragement it was undertaken; by showing that any degree of success in that design must prove very calamitous, and, if complete, destruction to the religion and liberties, as well as to the property of the people of this kingdom; and by such other arguments as shall occur to you.

"But at the same time you thus prepare the King's people to detest the design, and resist the danger that is threatened, you are to endeavour to create in them a firm confidence that his Majesty's wisdom and vigilance, with the affectionate zeal of his good subjects, aided by the Providence of God, (which has already in this instance so visibly espoused his Majesty's cause, by a timely detection of the conspiracy,) will make it end in the ruin of those only who shall join in it. The inconveniences which must follow such undertakings, though not successful, you will take care to lay at the right door, that is, of those whose restless discontents are the true and principal, if not the only, cause of them.

"His Majesty thinks it unnecessary to mention to you any farther particulars, and entirely leaves you to your own prudence and perfect knowledge of your duty. But he expects that at your return you inform him of all such things as you shall observe, and may be for his service to know." *

* The Judges now-a-days would be surprised to receive such a circular. They are left to their own discretion as to the topics they shall enlarge upon.

By these exertions of Lord Cowper energy was infused into the public councils, the spirit of the people was roused, and the new dynasty kept possession of the throne. He has very undeservedly been censured for the judicial trials and executions which soon followed. The "Rebellion of 1715" being suppressed in Scotland, and Preston having surrendered, the rebel Lords were lodged in the Tower of London, and the House of Commons proceeded against them by impeachment for high treason. Having been taken with arms in their hands in flagrant war against the reigning Sovereign, they all pleaded guilty, except the Earl of Winton; and a day was named for passing sentence upon those who had thus confessed their legal guilt. Lord Cowper was constituted Lord High Steward, and Westminster Hall was fitted up for the occasion.*

Prosecution of the Rebel Lords.

9 Feb. 1716.

At the time appointed, the Earl of Derwentwater, the Earl of Nithisdale, the Earl of Carnwath, Viscount Kenmure, Lord Widdrington, and Lord Nairn, were brought to the bar by the Deputy Governor of the Tower, the Gentle-

Sentence pronounced by Lord Cowper.

It being contrary to etiquette for barristers to be present, so that "the sages of the law" may have greater licence, and may without scruple repeat the same fine sentences in every county on the circuit, I never myself heard any of these discourses, but I have been obliged in the House of Commons to censure some of them. Addresses to the Grand Jury are certainly best employed in commenting upon the cases in the Calendar which are coming on for trial. Observations may be permitted on the general state of the country, but I hope the Judges will henceforth ever eschew party politics and questions of vexed political economy. A noble friend of mine who was foreman of the Grand Jury some years ago in a northern county, told me that having heard from a Judge of assize a panegyric on the corn laws, he had a great inclination to answer him, and — he would have been fully justified in doing so.

* *Extract from Lady Cowper's Diary.* — "Feb. 9th, the day of the trials: My Lord was named Lord High Steward by the King — to his vexation and mine, but it could not be helped, and so we must submit, though we both wished heartily it had been the Earl of Nottingham. The form of the attendance was this from hence: — The servants had all new liveries — ten footmen — four coaches with two horses, and one with six, — eighteen gentlemen out of livery, and Garter at Arms and Usher of the Black Rod in the same coach, — Garter carrying the wand. I was told it was customary to make fine liveries on this occasion, but had them all plain. I think it very wrong to make a parade upon so dismal an occasion as that of putting to death one's fellow creatures, nor could I go to the trial to see them receive their sentences, having a relation among them, my Lord Widdrington. The Prince was there, and came home much touched with compassion for them. What pity it is that such cruelties should be necessary!"

Lady Cowper's Diary.

man gaoler standing on their left hand, holding the axe, with the edge turned towards them. The necessary forms being gone through, the Lord High Steward addressed them, saying: — "You stand impeached by the Commons of Great Britain, in parliament assembled, of high treason, in imagining and compassing the death of his most sacred Majesty, in levying war against him, and proclaiming a Pretender to his crown to be King of these realms. There is nothing unusual or disadvantageous to you in this mode of proceeding. The whole body of the Commons of Great Britain, by their representatives, are your accusers, and the resolution thus to put you on your trial passed the Lower House, no one contradicting. You would have been sure of a patient and impartial trial by your Peers forming this august assembly; but you have severally admitted the truth of the charges alleged against you, accompanying your pleas with some variety of matter to mitigate your offences, and to obtain mercy. The circumstances said to have attended your surrender I do not now notice, and all due weight will be given to them; but it is fit that I should make some observations to your Lordships on your attempt to extenuate your guilt, — to the end that the judgment to be given against you may clearly appear to be just and righteous as well as legal. It is alleged by some of your Lordships, that you engaged in this rebellion without previous concert or deliberation, and without suitable preparation of men, horses, and arms. If this exempts you from the charge of being the planners of the treason, it aggravates your criminality in the execution of it, and shows that you were so eagerly bent on insurrection, that at the first invitation you flew into the field without any reasonable hope of success, and reckless of the ruin in which you were to involve yourselves, your friends, and your kindred. Another extenuation you rely upon is, that no cruel or harsh action (I suppose is meant no rapine, or plunder, or worse,) has been committed by you. But your Lordships will consider that the laying waste a tract of land bears a little proportion, in point of mischief, compared with the crime of which you stand convicted, — an open attempt to destroy the best of Kings, and to rase the foundation of a government the

most suited of any in the world to perfect the happiness, and to support the dignity of human nature. Besides, much of this was owing to accident; your march was so hasty, partly to avoid the King's troops, and partly from the vain hope to stir up risings in all the counties you passed through, that you had not time to spread devastation without deviating from your main and (as I have observed) much worse design. No, my Lords, these and such like are artful colourings, proceeding from minds filled with expectation of continuing in this world, and not from such as are preparing for their defence before a tribunal where the thoughts of the heart, and the true springs and causes of action must be laid open." He then proceeds to state the circumstances which aggravated their Lordships' guilt, the first being the high personal character of George: "It is a trite, but very true remark, that there are but few hours between Kings being reduced under the power of pretenders to their crown and their graves. Had you succeeded, his Majesty's case would, I fear, have hardly been an exception to that general rule, since it is highly improbable that flight would have saved any of that illustrious and valiant family.* It is a further aggravation, that his Majesty, whom your Lordships would have dethroned, affected not the crown by force or by the arts of ambition, but succeeded peaceably and legally to it. On the decease of the late Queen without issue, he became undoubtedly the next in the course of descent capable of succeeding to the crown by the law and constitution of this kingdom. The right of the house of Hanover was limited and confirmed by the Legislature in two successive reigns. How could it then enter into the heart of men to think that private persons might, with a good conscience, endeavour to subvert such a settlement by running to tumultuary arms, and by intoxicating the dregs of the people with contradictory opinions and groundless slanders?" After excusably dwelling on the prosperity the nation was enjoying, the additional fiscal burdens brought on the country by

* This is an ungenerous sarcasm on the old Pretender's recent escape from Scotland, and other similar adventures of the Stuarts.

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the rebellion, and the horrors of civil war, he comes to the subject of religion, and here, if he does not incur personal blame, he shows strikingly the lingering illiberality of the age: "I must be just to such of your Lordships as profess the religion of the Church of Rome, that you had one temptation, and that a great one, to engage you in this treason, which the others had not, — in that it was evident success on your part must for ever have established Popery in this kingdom, and that probably you could never have again so fair an opportunity. But then, good God! how must those Protestants be covered with confusion who entered into the same measures, without so much as capitulating for their religion (that ever I could find, from any examination I have seen or heard), or so much as requiring, much less obtaining, a frail promise that it should be preserved, or even tolerated. It is my duty to exhort your Lordships thus to think of the aggravations as well as the mitigations (if there be any) of your offences; *and if I could have the least hopes that the prejudices of habit and education would not be too strong for the most earnest and charitable entreaties, I would beg you not to rely any longer on those directors of your consciences, by whose advice you have very probably been led into this miserable condition; but that your Lordships would be assisted by some of those pious and learned divines of the Church of England, who have constantly borne that infallible mark of sincere Christians, universal charity.** And now, my Lords, nothing remains but that I pronounce upon you (and sorry I am that it falls to my lot to do it) that terrible sentence of the law, which must be the same that is usually given against the meanest offenders in the like kind. The most ignominious and painful parts of it are usually remitted by the grace of the crown to persons of your quality; but the law in this case, being deaf to all distinctions of persons, requires I

* We must recollect that this is the language of the most liberal Judge of that time, who, like Lord Somers, by going such lengths for toleration, had incurred the suspicion of infidelity. The most bigoted Judge of the present age, in passing sentence of death on a Roman Catholic, would not advise him to prepare for the great change he was to undergo, by renouncing that spiritual consolation in the efficacy of which he had been taught to trust.

should pronounce, and accordingly it is adjudged by this Court, That you, James Earl of Derwentwater, &c. &c." * CHAP. CXVI.

Fate of the rebel Lords.

Lord Cowper had now a very arduous and painful task to perform in resisting the application for mercy to those unfortunate noblemen. Most people admitted that, as they believed their cause to be good, they were free from moral guilt; the thought could not be stifled, that, if they had succeeded, they would have been celebrated and rewarded as the most loyal of subjects; their gallantry and misfortunes excited general sympathy, and many who condemned their conduct, together with all who approved, attempted to save them. A motion made in their favour in the House of Commons, though powerfully opposed by Walpole, who declared that "he was moved with indignation to see that there should be members of this great body so unworthy as, without blushing, to open their mouths for rebels and parricides," was negatived only by a majority of seven, — and a like motion in the House of Lords was carried by a majority of five. Carnwath, Widdrington, and Nairn, were respited; but a warrant was granted, which Lord Cowper signed, for the execution of Derwentwater, Kenmure, and Nithisdale. All know, from the affecting narrative of Lady Nithisdale, that by her heroic courage and self-devotion, her husband escaped from the Tower in disguise the night before the day when he was to have suffered.† Derwentwater and Kenmure died bravely, praying for King James. I must say that I think this was a wholesome severity, and was required by the principles on Feb. 23. 1716.

* 15 St. Tr. 796. This performance was loudly praised, — at least to Lady Cowper. She says in her Diary: — "I am delighted beyond measure to hear my Lord's speech (at the pronouncing sentence) so commended by every body, but I esteem nobody's commendation like Dr. Clarke's, who says *'tis superlatively good, and that it is impossible to add or diminish one letter without hurting it.*" Horace Walpole thus amusingly alludes to the recollection of Lord Cowper's eloquence on this occasion: — "After the second Scotch rebellion Lord Hardwicke presided at the trial of the rebel Lords. Somebody said to Sir Charles Wyndham, 'Oh, you don't think Lord Hardwicke's speech good, because you heard Lord Cowper's.' 'No,' he replied, 'but I do think it tolerable because I heard Serjeant Skinner's.'"

† I have often been tickled by George I.'s quaint saying when he heard how Lord Nithisdale had escaped: — "It was the very best thing a man in his condition could have done!" The entry in Lady Cowper's Diary is very amiable: — "It's confirmed that Lord Nithisdale is escaped. I hope he'll get clear off. I never was better pleased at any thing in my life, and I believe every body is the same."

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which penal infliction is to be justified. The power and eclat to be gained by a successful attempt to overturn an established government, hold out a temptation which must be counterbalanced by the terrific consequences of failure, and Gibbon has justly observed, "the rebel who bravely ventures has justly forfeited his life." *

March 15. 1716. Trial of Lord Winton.

The Earl of Winton having pleaded not guilty, his trial came on shortly after, before the Peers in Westminster Hall, Lord Cowper again acting as Lord High Steward. He thus addressed the noble prisoner when first placed at the bar: "Your Lordship may be assured that justice will be administered to you, attended not only with that common degree of compassion which humanity itself prompts for persons in your condition, but also with that extraordinary concern for you which naturally flows from a parity of circumstances common to yourself and to them who judge you. On the other hand, you must not hope that, if you shall be clearly proved guilty, their Lordships, being under the strongest obligations to do right that can be laid on noble minds, (I mean that of their "*honour*,") will not break through all the difficulties unmerited pity may put in their way to do perfect justice between your Lordship and the public."

"Cowper Justice."

Lord Winton was a sort of half-witted person, with a considerable share of shrewdness and cunning, who hoped by delays and accidents to save his life. The Commons made out a very clear case against him, by proving that he had raised and commanded a regiment of horse for the Pretender; that he several times assisted in proclaiming him as James VIII. of Scotland and James III. of England; that he had actually fought King George's troops at Preston, and that he was taken in arms when that town surrendered. Several times he made frivolous application for a suspension of the trial, on the ground that witnesses whom he expected had not arrived, and he wished his Counsel to be allowed to address the House on a point of law, refusing to tell what the point was, — trying to create the semblance of a grievance. The Lord High Steward long kept his temper, but at last overruled a fresh application for an adjournment with some

* Decline and Fall, vol. xii. p. 242.

impatience and harshness. Winton having gained his object, eagerly exclaimed, "I hope, my Lords, I am not to have what in my country we call COWPER JUSTICE — that is, to *hang a man first and to try him afterwards*."* Lord Cowper very prudently took no notice of this sally, although for a short space it discomposed the gravity of the assembly; — and the trial proceeded. But such is the effect of party-spirit and of public envy, that the expression was kept alive as long as this great man lived; and when it was desired to question any of his legal positions there was a cry of "*Cowper Justice!*" or "*Cowper Law!*"

The supposed murderer of the fair Quakeress, now M.P. for Truro, replied on behalf of the Commons, and showed that the trial had been conducted with fairness and kindness towards the prisoner. All the Lords present agreed in an unanimous verdict of *guilty*. A motion was then made in arrest of judgment, and argued by counsel†, but properly overruled, and the Lord High Steward pronounced sentence of death upon the prisoner, complimenting and comforting him by these concluding words: "Being a Protestant, you are likely to become a sincere penitent for having engaged in a design that, had it taken effect, must have destroyed the holy religion you profess." The prisoner was sent back to the Tower, but (probably with the connivance of the government) he contrived to escape before the day fixed for his execution.

* 15 St. Tr. 847. This expression has been familiar to me from infancy, having been born in the town where this Rhadamanthean procedure "castigatque auditque dolos," is supposed to have prevailed. My present country residence is in the immediate neighbourhood of another town in Scotland, likewise famous for a peculiar mode of administering the law. "Jeddart" or "Jedburgh Justice" is, that when several prisoners are jointly put upon their trial, the Judge, to save the time and trouble necessary for minutely distinguishing their several cases, puts it to the Jury, "Hang all? or save all?"

† Sir Constantine Phipps, who had been Lord Chancellor of Ireland in the reign of Queen Anne, and was now again practising at the bar, being counsel for the Earl of Winton on this occasion, was thus reprimanded by the Lord High Steward for having begun to speak without permission: — "I am ordered by the Lords to reprimand you, Sir Constanstine Phipps, for having, in a proceeding of this nature, presumed to be so forward as to speak for the prisoner at the bar before a point of law was first stated and you had leave to speak to it, and your fault is certainly the greater for having presumed to do this in a matter which you cannot but know is matter of fact, and that the law is not doubtful one way or the other, the fact being supposed." — 15 St. Tr. 875.

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The conduct of Lord Cowper with reference to these trials was, on the whole, creditable, though not entirely free from blame; and, to mark the improvement which had taken place in the administration of criminal justice, it should be recollected that only thirty years had elapsed since Jeffreys had slaughtered his victims by hundreds at a time, and had made an *aceldama* of the West of England.

Acquittal of Lord Oxford.

I may now finish my view of Lord Cowper as a criminal Judge with an account of the acquittal of Lord Oxford. The persecuted premier, having lain above two years a prisoner in the Tower, at last presented a petition to the House of Lords, complaining of the delay. In consequence, a day was fixed for his trial; Westminster Hall was fitted up for the solemnity, and Lord Cowper was appointed, by commission under the Great Seal, to preside as Lord High Steward.

Jan. 24. 1717. Lord High Steward's address to the Earl of Oxford.

When the day arrived, the Peers having assembled, and the King, the royal family, and the foreign ministers being seated round as spectators, the Commons attending as prosecutors, the noble prisoner was brought from the Tower and placed at the bar, the fatal axe by his side, the edge still turned from him. When the articles of impeachment and the answers had been read, the Lord High Steward, holding his white wand in his hand, thus spoke: "Robert Earl of Oxford and Earl Mortimer, it has been usual, before the Commons proceed, to say something from this place to persons in your Lordship's present condition; partly by way of exhortation to a reasonable confidence in the great honour, justice, wisdom, integrity, and candour of their judges, their peers, the House of Lords in Parliament assembled, and partly by way of direction to assist them in their behaviour and conduct during the course of their trial. But, considering the many great offices your Lordship has borne in the state, your long experience and known learning in all parliamentary proceedings, I cannot but think it would seem improper for me to be speaking to your Lordship in that matter. Wherefore I proceed merely to acquaint your Lordship, and others whom it may concern, with such orders as the Lords have made, which it is fit should thus early be made known." He then stated, that on the articles for high

treason counsel could not be heard, but that on the articles for high crimes and misdemeanours a full defence by counsel might be made, and that, according to a recent statute, all the witnesses for the prisoner would be examined on oath, as well as those for the prosecution.

Mr. Hampden then opened the first article, respecting the treaty of Utrecht, and Sir Joseph Jekyll had called his first witness in support of it, when Lord Harcourt, the Tory Ex-chancellor (it is said, from a hint given to him by Walpole, at this time in opposition,) interposed, and said, "that before the managers proceeded further, he had a motion to make." The Peers having accordingly withdrawn into their own house, he moved "that no evidence should be received on the charges for misdemeanour till the charges for high treason were disposed of." Lord Cowper did not consider it consistent with his duties as Lord Steward to take a part in the discussion. The resolution, though warmly opposed by Lord Sunderland and other ministerialists, was carried by a majority of 88 to 56. It is censured by a great constitutional authority *, but, I must say, I think it was very reasonable. The Commons proposed to proceed, on the same trial, for some offences charged as amounting to high treason, and for others, arising out of entirely different transactions, admitted to be only misdemeanours. Besides the disadvantage under which the prisoner was placed by the length of the inquiry, and his attention, and the attention of his judges, being distracted by such a diversity of unconnected facts, it seems enough to say that the trial ought to have been conducted on the different charges in a totally different manner, not only as to form, — as the accused peer standing outside the bar or sitting within it, — but as to substance, — as being allowed or forbidden the assistance of counsel to cross-examine witnesses and to speak upon the merits. The resolution was warmly resisted by the Commons, who pronounced it an infringement of their privileges, and refused to comply with it. Several messages and conferences upon the subject between the two Houses only

**Quære, whether the Commons have a right to insist on a peer being tried by the Lords at the same time for treasons and misdemeanours?**

**Quarrel between the two Houses.**

* Hall. Const. Hist. vol. iii. p. 313.

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served to widen the breach. The Lords peremptorily named another day for the trial to proceed on the principle which they had laid down, and the Commons resolved that, "being so ill used, and justice being denied to the nation, they would abandon the prosecution." When the day arrived, proclamation was made for "the Commons to appear and make good their charge against Robert Earl of Oxford and Earl Mortimer;" and no prosecutor appearing, he was acquitted. The Lord High Steward then broke his staff, and the intended victim, having by the harsh treatment he had experienced almost recovered the popularity he enjoyed when his life had been attempted by Guiscard, was conducted home by his friends who had contrived the quarrel between the two Houses, amidst the shouts of the population of London.* Although this impeachment may be palliated in respect of the violence of the Tories during the four last years of Queen Anne, and of the cry for vengeance raised not only by the vulgar retainers of the Whig party but by such a veteran as Marlborough, and by such an aspiring youth as Lord Stanhope of Shelford (afterwards the celebrated Earl of Chesterfield), it must be allowed to reflect considerable discredit upon Lord Cowper, with whose sanction it was commenced, and under whose auspices it was conducted. He ought boldly to have declared in the cabinet, and, if necessary, in his place in parliament, at the risk of losing his office and disobliging his friends, that there was no pretence for charging the Earl of Oxford with high treason, and that, whether the treaty of Utrecht was wise or foolish, there was no sufficient ground for prosecuting, as a criminal, the prime minister who had negotiated it, believing it for the public good. The impeachment was not only unjust but impolitic, for it caused a strong reaction for the Tory leader, which, with health and favourable chances, might have restored him to power.† The High Steward's personal demeanour towards his

Oxford acquitted.

* 15 St. Tr. 1046—1195. 7 Parl. Hist. 74—215. 494—498.

† If Oxford did not recover the Treasurer's staff, this prosecution at all events secured him the noble tribute of applause from the muse of Pope, which ought to have gratified him more:—

> "And sure if aught below the seats divine
> Can touch immortals, 'tis a soul like thine;

old opponent in all these proceedings was allowed to be liberal and courteous,—although it was little foreseen that before they died they would be sitting on the same opposition bench, dividing together in the same minorities, and signing the same protests.

Passing of the Septennial Act.

A little before this the country was agitated by a measure the responsibility of which, in a constitutional point of view, rested entirely on Lord Cowper, for although Lord Somers is said to have brightened up as it was passing through parliament, and to have approved of it, he was not in a situation to be consulted when it was first brought forward—the SEPTENNIAL ACT. It was in the House of Lords that the battle was to be fought; for little opposition was anticipated among the representatives of the people to a proposal that they should sit on for seven years, having bought their seats for three years,—or been elected after an expensive contest, likely soon to recur. To lessen the indelicacy of the trustees by their own authority extending the term of their trust, the bill was launched in the Upper House, and there it was opposed not only by the great body of the Tories, but by Lord Parker, afterwards Earl of Macclesfield and Chancellor, and by several others who had always supported liberal principles.* Lord Cowper seems to have made a masterly speech on the other side, but we have no particulars of it beyond that "he gave a genuine account of the Triennial Act, and by what means it was obtained, and vindicated the government as to the present dissatisfaction." After a protracted opposition, and furious protests, the bill passed the Lords, and, as had been foreseen, it was received with great favour by the Commons. If it had applied only to future parliaments, the question would fairly have arisen, whether three or seven years be the better term for the duration of parliaments; but

A soul supreme in each hard instance tried;
Above all pain, all passion, and all pride,
The rage of power, the blast of public breath,
The lust of lucre, and the dread of death."

* The best speech against the Bill is by Lord Chief Justice Trevor, who says, "If this House of Commons continued themselves beyond the time for which they were chosen, they were no more the representatives of the people, but a house of their own making."—7 Parl. Hist. 298.

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when it was to prolong the existence of the actual parliament beyond the period for which the members of the House of Commons were elected to represent the people, little I think can be urged for it, except NECESSITY—the tyrant's plea, or, in milder language, "the safety of the state." "Nothing," says Mr. Hallam, "can be more extravagant that what is sometimes confidently pretended by the ignorant, that the legislature exceeded its rights by this enactment, or if that cannot legally be advanced, that it at least violated the trust of the people, and broke in upon the ancient constitution." * There can be no doubt as to the legal power of the legislature to pass the Septennial Act, but I do think that it was a violation of the trust confided by the people to their representatives. According to ancient constitutional practice, there were frequent renewals of parliaments, and the continuation of the sittings of the same parliament for seventeen or eighteen years was an unconstitutional innovation. The repeal of the Triennial Act, that parliaments might last for seven years, cannot be considered a restoration of the old constitution, and this defence would have been equally strong if the members of the House of Commons had enacted that they should hold their seats during the life of the reigning sovereign. — However, when we see the names of those who supported the Septennial Act, framed as it was to prolong the parliament which passed it, I by no means presume to condemn the measure, although I cannot concur in the arguments by which it is defended. As a *coup d'état* it may be justifiable. There is no doubt that there then existed in the country the "dissatisfaction" to which Lord Cowper refers; that the necessary severity exercised in suppressing the rebellion had cast much odium on the government; that the classes who were suffering ascribed all the evils they had to struggle with to the King and his ministers; and that all classes were disposed to forget the dangers from which they had been delivered. If a dissolution of parliament had speedily taken place, a Jacobite House of Commons would very probably have been returned, and there might have been another "Restoration," to be followed by another "Revolu-

* Const. Hist. iii. 316.

tion;" — whereas the nation was blest with a long course of tranquillity and happiness.

Charge against Lord Cowper respecting the appointment of magistrates.

A charge was now brought forward against the Chancellor, which most of his successors have had to encounter — of improperly dealing with the appointment and dismissal of magistrates. We have his own vindication on this subject preserved in the draught of a memorial to his Majesty, to prove that he had done enough for the present establishment in the management of the commissions of the peace, as well as that he had not abused his power by oppressing the other side. This he inclosed to Lady Cowper, that she might translate it into French, and render it intelligible to his Majesty: —

His vindication.

"Having reason to beleive, y<sup>t</sup> some, either frō a design to reflect upon my Conduct in setling y<sup>e</sup> Com<sup>ns</sup> of y<sup>e</sup> Peace, or for want of being throughly informed of that mater, have represented to y<sup>r</sup> M. that those Com<sup>ns</sup> have not yet been adjusted so much for y<sup>r</sup> M<sup>s</sup> service as they might have been: I beg leave to lay bef. y<sup>r</sup> M. my apology in that ptic<sup>r</sup>, w<sup>ch</sup> I think will be best done in a true and clear state of that whole affair; that may serve at the same time to give y<sup>r</sup> M. so full an information, as will make it easy for you to form a right judgment on that subject on all future occasions.

"Antiently ther were but a few Just. of y<sup>e</sup> Peace in each County, in comparison of y<sup>e</sup> great numbers ther now are, and have been for some considerable time past; and this encrease of their nūbers has given occasion to an abuse yet growing (viz.) y<sup>t</sup> many of y<sup>e</sup> Country Gent. affect to be in y<sup>e</sup> Com<sup>n</sup> (as y<sup>r</sup> M. Privy Council are) merely *titular*, to enjoy the credit and title in their Country without giving themselves y<sup>e</sup> trouble of doing y<sup>e</sup> Duty; w<sup>ch</sup> is very extensiv; conteyns allmost y<sup>e</sup> execution of all Penal Laws (except y<sup>e</sup> last tryall and judgm<sup>t</sup> in Capital Cases) and y<sup>e</sup> whole Police of y<sup>e</sup> Kingdō, (such as it is): for which they have no Salary or profits, besides a few small fees scarce sufficient to keep a Clerk.

"They are authorized by y<sup>r</sup> M<sup>s</sup> Com<sup>n</sup>, and that during pleasure only, and in notion of Law are put in and out by virtue of y<sup>r</sup> Royal cōmand only (as all other officers of y<sup>r</sup> M. are),

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though in fact and according to y^e^ Practise of many years past, frō y^e^ great nūber of them before mentiond (w^ch^ made it impracticable to trouble y^e^ Crown w^th^ particulars) y^e^ Crown has left y^e^ care of that mater wholy to y^e^ Ch^lr^ or Keeper of y^e^ Gr. Seall; Except wher the Crown has been pleasd to interpose by giving imediate comands to y^e^ Gr. Seall for placing in or displacing any p.ticul^r^ persons.

" There has been no difficulty at any time past to put in any Gentlemen properly recōmended as qualifyd and well affected to y^e^ goverm^t^. But so late as in my own memory of business, very few, if any, were displaced without cause assign'd and *prov'd,* because it was justly thought to be an injurious disgrace on any Gentl^n^ in his Country to be turn'd out after He had serv'd his King and Country without reward, unless for some known or evident reason. And I have been present at several formal Hearings of accusations and defences in order to determine, whether y^e^ person accus'd should be turn'd out of y^e^ Com^n^ or not.

" But as y^e^ two partys grew more and more set and violent against one another, this cōmendable tenderness, I may say justice, began by degrees to be laid aside, and Gentlemen well qualifyd were put out of that Com^n^ without formal hearings, or even so much as proof ex parte of any misbehaviour in their Duty.

" When I had y^e^ Honour of y^e^ Gr. Seall the first time, I cannot accuse myself of that last mention'd practise, and yet by perseverance in putting in those who wer best inclind to y^e^ Prot. Succ^n^, and leaving out, as fast as I could discover them, those who wer of too inferiour a Condition, and taking all just advantages of proof ag^t^ those who discoverd a disaffection to y^e^ true interest of their Country, I can truly say, y^e^ Com^ns^ of the Peace wer at my surrendring y^e^ Seall, in a very good state, w^th^ a sufficient balance in favour of y^e^ honest interests.

" Since which time, during y^e^ remainder of her late Maj^ys^ reign, I must admitt some honest and well qualifyd Gentl^n^ wer turnd out without any just objection provd ag^t^ them (but not many as I can be informd) and many of y^e^ Tory and even Jacobite party wer poured into all Com^ns^ of y^e^ Peace;

and so they stood at y$^{r}$ M.$^{s}$ happy accession to y$^{e}$ Crown. Y$^{r}$ M. well knows wh$^{ch}$ of these partys I sincerely think most consistent w$^{th}$ your true Goverm$^{t}$: and accordingly all the Cōmissions of the Peace being to be renewed on y$^{r}$ M's accession to y$^{e}$ Crown, I did as much as the hurry of doing such a work all at once, w$^{th}$ the great and necessary imployment of my time in other parts of my office would permit, turn out according to y$^{e}$ best accounts I could get, great numbers of persons disaffected and otherwise not well qualifyd, and put in all I could have well recōmended as to y$^{e}$ Estate and affection to y$^{e}$ Govm$^{t}$: and as to those who wer of Estate and quality sufficient in their Country, but were represented by y$^{r}$ M$^{s}$ friends as of suspected inclinations; I thought it for your M$^{s}$ interest not to displace them on bare general suspicion; unless they who sollicited their Removal, would give in writing some pticular instance or objection to their Conduct, and either prove it or at least subscribe to their knowledge or beleif of it.

" This I requird, not that y$^{e}$ later course would have been any defence to me in case the contrary party had provd strong enough to call my Conduct in question; but y$^{t}$ at least I might, by having recourse to my Papers, be able to alledge a reason for my proceeding to any that should come to expostulat w$^{th}$ me, why this or that person was removd; w$^{ch}$ is not unfrequently done.

" Many that pressd to remove others would not go so far as to comply w$^{th}$ that small and reasonable request, y$^{t}$ they should at least own their opinion and the fact they went upon, and not expect y$^{t}$ I should take y$^{e}$ whole upon me, of displacing so many Gentlem$^{n}$ (who wer perfect strangers to me) without y$^{e}$ least objection either within my own knowledge, or frō any credible information that I could cite in my defence.

" So y$^{t}$ the point left to be considerd is, if I should have gone any step further, and that might have been by displacing Gentle$^{n}$ of sufficient Estate and otherwise well qualifyd, only on the private whispers of persons, though well affected, yet so uncertain or timorous as not to dare to own they had so much as requested it.

"I must confess it was and is my opinion yt so very partial and unjust a proceeding must have done much more harm than good to yr Ms govment, and that the true way to mend ye Coms is first to persuade those honest men to act who are put in (wch not one in three of em does) by some psons of note and good affection in each County, and then by a Review of ye Coms (wch is now in hand) and such good men as may have been omitted, and displace others as fast as they shew any signs of disaffection to yr Majesty's Govt. by so much as a neglect of their Duty: to wch ye frequent tumults wch are either incouraged or neglected by such magistrates will often give a sufficient handle.

"This reminds me to mention another difficulty brought upon me in making alterations any faster; arising frō the before mentioned practise of affecting to be in ye Comn wthout acting, by means of wch it has often hapned yt wher I have put in more good than bad have been turnd out, yet not so many by half as those who were turnd out, have acted in their places, so yt ye Country have been in danger of wanting a sufficient Number to do Justice.

"One general pretence for not acting is, yt they dont care to act while such or such (perhaps some of ye most considerable in the county) are in: wch Humour, if it be yielded to, will make ye Coms in a manner Elective, and betray ye Power and Dignity of the Crown; wch rather then give into I would stand a good deall of their reproaches as to my own particular.

"Upon ye Whole, Sr, if any Who think this mater not carryd far enough or fast enough, can propose to yr M. what steps I ought to take any further than I have done, I beg to be heard to such proposal, and will in ye end submit intirely to yr Ms Judgmt.

"Assuring you no one in ye kingdom hath a stronger biass than myself to do any thing of this nature, wch may tend to weaken a set a men who will never be cordial friends to your Government: But wher my judgt convinces me yt any thing I have ye greatest inclination to do (if I was to consult that only) would yet be injurious to or discredit yr Ms administration: I make my own passions or pjudices submit to that great end, yr Majesty's safety and ye public good; as I do

so myself, so I heartily hope and pray y[t] every one in any degree of power may constantly follow the same rule.

"Since my writing y[e] account above mentioned, the motion made by y[e] Torys, and rejected in y[e] H. of Cōmons, 'That a list might be layd before the House of y[e] names of all such as had been put out of the Cōmiss[n] of y[e] Peace since y[r] M[s] accession to the Crown,' shews, that at y[e] same time y[e] Whigs complain y[e] alterations have been too few, y[e] Torys are of opinion that so many have been removd as could well be justifyd, if they might appear before the House at one View.

"My Dear,

"Above is y[e] postscript, w[ch] I hope may be quickly turnd into Fr. and added; I am glad to hear you are pretty well, and upon tryal I thank God I find myself so too.

"D[r] Rogue
"Ever and altogether
"Y[rs] C. C.

"6 Cl. afternoon, going to Cockpit." *

The King was satisfied by this explanation, and the threatened proceedings in parliament against the Lord Chancellor were dropped.

**Factious opposition to the Mutiny Bill.**

The only other debate in which we have any account of Lord Cowper taking a part while he held the Great Seal was that in February, 1718, on the Mutiny Bill; and here he appears, I think, to very great advantage. It was proposed to keep up a force of 16,000 men for the whole kingdom, and that for any military offences which they might commit they should be tried by a court-martial. With a view of embarrassing the government there was a most heterogeneous opposition to the bill led by an ex-premier, the Earl of Oxford, who now spoke for the first time since his release from the Tower, and declared "that as long as he had breath in his body he would speak for the liberties of the country; that such a force was wholly useless in the time of profound peace;

* This note is addressed "To my Dear Palatine."

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that the proposal could not but raise apprehensions that something was intended against our happy constitution; and that trial by a court-martial was inconsistent with the rights and privileges of Englishmen." The Duke of Argyle, an Ex-commander-in-chief, contended, and tried to prove, by various instances drawn from the history of Great Britain, that a standing army in time of peace was ever fatal, either to the Prince or to the nation. And Lord Harcourt, an Ex-chancellor, insisted that this bill, constituting military tribunals without appeal, was an invasion of the rights of the peerage, it being a branch of their Lordship's prerogative to be the supreme court of judicature in all cases, civil and criminal, and that the enactment enabling the King to establish courts-martial, with power to try and determine any offences specified in the articles of war, unconstitutionally vested a sole legislative power in the Crown, which was communicated and delegated to a council of war.

Able defence of the bill by Lord Cowper.

Lord Cowper leaving the woolsack, made a speech which, from the slight sketch we have of it, appears to have been comprehensive and masterly. He said, that "he had maturely considered the affair now in agitation, not as a person in a public station, but as a private unprejudiced man, and that he was convinced in judgment and conscience that it was necessary, both for the support of the present happy establishment and the security of the nation, to keep up the force now on foot; he was confirmed in this opinion by considering what thoughts the Pretender and his friends [we may suppose that he here fixed his eyes on Lord Harcourt] had of this matter, and reflecting that they have nothing more at heart than to procure the disbanding of those forces that have suppressed the late *unnatural** Rebellion; he doubted not but the whole nobility that made up that august assembly [here there must have been a little ironical curl of his lip] was inviolably attached to his Majesty King George; his Majesty certainly had the best part of the landed, and all the trading

* I never could understand how this epithet came to be constantly applied to the Rebellions of 1715 and 1745. They might be, and I think they were, *wicked* and *foolish*, but there seems nothing *unnatural* in an attempt to drive away foreign rulers, and to recall our native princes.

interest; as to the Clergy he would say nothing — but it was notorious that the majority of the populace had been poisoned, and that the poison was not yet quite expelled; the dangers which seemed to proceed from the army were chimerical, whereas the dangers with which the nation was threatened from the Pretender and his friends, in case there were no army to oppose them, were real, and the mischief that might ensue upon the success of their designs irreparable; if there had been such a small standing force as it was now wished to maintain, timely to suppress the tumult and riots which were raised on his Majesty's accession to the throne, in all probability there had been no open rebellion, and the salutary restraint was really for the safety and advantage of those who exclaimed against it; in his opinion, MAGNA CHARTA was entirely foreign to the present debate; they were now to consider how the Protestant succession was to be supported against vigilant, bold, and restless enemies, and they had the more reason to be on their guard as the advices from Scotland told that sedition and rebellion were again trumpeted forth from the pulpits in that country; as to the courts-martial, they were only to be for the trial of offences of which common law Judges and Juries were wholly incompetent to determine upon; objecting to them was objecting to a military force, which, without them, could not be kept in a state of discipline; and the argument, that they invaded the rights of the peerage, was not less ridiculous than it would be to contend that shooting a mutineer, or a coward in the face of an enemy, would be a breach of the privileges of their Lordship's house." I hope "he resumed the woolsack, amidst loud and long-continued cheers." The bill passed, but only by a majority of 91 to 77, and a furious protest against it was signed by many Lords, both spiritual and temporal.*

* 7 Parl. Hist. 538—548.

# CHAPTER CXVII.

## CONCLUSION OF THE LIFE OF LORD COWPER.

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Resignation of Lord Cowper.

WITHIN two months after delivering this great speech, which must have been so satisfactory to the King and his ministers, Lord Cowper ceased to be Chancellor. The cause of his resignation has been considered a mystery. Addison gave up at the same time the post of Secretary of State, but this was from real ill health, and a consciousness of official incapacity. There were other partial changes in the cabinet, — none of them indicating any change in the policy of the government. We do not know of any personal difference which Lord Cowper had with Sunderland, Stanhope, or any of his colleages. "Growing infirmity," as usual on such occasions, was talked of, but he had been hitherto able satisfactorily to perform all the duties of his office, and he continued after his retirement to show unabated vigour of body and elasticity of mind. Tindal says, "though it had been reported some months that he desired to retire, yet his resigning his employment at that juncture was a great surprise to the public, and no small grief to all unprejudiced persons." * In a lively little sketch of his career, published in the "Historical Register," immediately after his death, it is said: — "The great fatigues he had undergone having very much impaired his health, he had some time before entertained thoughts of a retreat. This voluntary resignation was a great grief to the well-affected, and to all dispassionate men of both parties, who knew that, by his wisdom and moderation, he had gained abundance of friends to the King, — kept steady many wavering minds, — brought the clergy into a better temper, and hindered some hot over-zealous spirits from running things to dangerous extremes." † The public

* Tind. Cont. Rap.
† Historical Register, 1723.

were called upon to infer that he parted from the government on friendly terms, by his submitting to an elevation in the peerage.

True cause of it, the quarrel between the King and the Prince.

From original papers still preserved in MS., I think it is clear that his resignation or dismissal arose from the feud in the royal family, and the belief that he took part with the Prince against the King. Lady Cowper's position in the household was at first favourable to her husband's influence. Having been the correspondent, she had become the chief confidante of the Princess of Wales*, who (the wife of George I. being shut up in prison at Zel) already played the part of Queen in England. On the arrival of the Hanoverian mistresses, the most prudish ladies of the Court do not seem to have scrupled to visit them, and Lady Cowper meeting the King at Madame Keilmansegge's *petits soupers*, attracted his notice by her sprightliness, without any detriment to her character, for, indeed, his Majesty never showed any taste for English beauty.† Inveighing in her DIARY against the Tory Duchess of Shrewsbury, and telling scandalous stories of her, she proceeds:—"Our acquaintance was renewed by supping together at Madame Keilmansegge's about a month ago, where, speaking of the King of France's eating, she was counting twenty things at least upon her fingers that he had eat at a time, she was

* "I am come into the Court with a resolution never to tell a lie, and I hope I find the good effects of it, for she reposes more confidence in what I say than on any others upon that very account."—*Lady C.'s Diary.*

† When Lady Cowper was presented to him on her appointment to the bedchamber, he ought, according to court etiquette to have kissed her, although she had before received this honour on her first presentation; but "he said five or six times, 'Oh, je l'ay vue; elle est de ma connoissance.' At last the Duke of Grafton told him it was upon my being made a lady of the bed-chamber; so then he said, 'Ouy, je le feray avec plaisir,' and I was saluted."

Although his Majesty, I presume, at once submitted to kiss the Lady Mayoress, there was a tremendous controversy whether she was to be kissed by the Princess at the banquet given at Guildhall on Lord Mayor's day; "but Queen Anne not having kissed her when she dined in the City, my Mistress did not do it either. My poor Lady Humphreys made a sad figure in her black velvet, and did make a most violent 'bawling for her page to hold up her train before the Princess,' being loth to lose that privilege of her mayoralty. But the greater jest was, that the King and the Princess both had been told that my Lord Mayor had borrowed her for that day only, and I had much ado to convince them of the contrary; but at last they did agree, that if he had borrowed a wife it would have been another sort of one than she was."—*Lady C.'s Diary.* The Lady Mayoress is said, when dinner was announced, to have roared out to another page, "Boy, carry my *bucket*"—perhaps meaning her *bouquet*.

saying, *Sirè, il mange ceci et cela,* and counting over a number of things. Upon which I said to the King, 'Sire, Madame la Duchesse oublie qu'il a bien plus mangé que cela.' 'Qu'est-ce qu'il a mangé donc?' said the King. 'Sire,' répondis-je, 'il a mangé son peuple, et si le bon Dieu n'avoit pas conduit votre Majesté au Trône dans le moment qu'il a fait, il nous auroit mangé aussi.' Upon which the King turned towards the Duchess and said, 'Entendez-vous, Madame, ce qu'elle dit?' and he did me the honour to repeat this to several people which did not at all strengthen my interest with her grace."—But from the time when the enmity of the father against the son began, the connection between Lady Cowper and the Princess threw a suspicion on the Chancellor, and the Hanoverian party were desirous of turning him out to make room for Lord Chief Justice Parker, who had been getting possession of the royal ear, and who, it was expected, would be more accommodating in passing grants under the Great Seal.

The following extracts from Lady Cowper's Diary will throw great light on these intrigues:—

Extracts from Lady Cowper's Diary, showing intrigues in the Court against him.

As early as October, 1715, she says, "They had done a world of things to force Lord Cowper to quit, who was their superior in every thing, because they were afraid of his honesty and plain dealing." . . . "My Lord was visited by the Duke of Somerset, who repeated all the conversation he had with Lord Townshend upon his dismission. Lord Townshend came to the Duke of Somerset, and with a sorrowful air, told him he was sorry to tell him that the King had sent him to tell his Grace that he had no further occasion for his services. The Duke of Somerset said, '*Pray, my Lord, what is the reason of it?*' Lord Townshend answers, '*he did not know.*' '*Then,*' says the Duke of Somerset, '*by G——, my Lord, you lie; you know that the King puts me out for no other cause but for the lies which you, and such as you, have invented and told of me.*' Lord Cowper had advised the Cabinet Council against this step, so they did not acquaint him with it when it was done."..."My Lord fell ill again the Saturday following; and continued so a great while, which occasioned a report that he was going out of his place.

Some said he had not health to keep in; others, more truly, said the Lords of the Cabinet Council were jealous of his great reputation, and had a mind to have him out, so were resolved to weary him out of it, which last was very true, for they had resolved among themselves, without acquainting Baron Bernstorff with it, to put my Lord Chief Justice Parker into his place.". . . "I kept house all this time, and saw nobody, and had enough to do to keep my Lord Keeper from giving up, and I'm sure the disputes and arguments we had upon that subject were wholly the occasion of his staying in, and it was at least three weeks before I could prevail. The month ending with the solemnisation of the Prince's birthday, which should have been solemnised the 30th if it had not been Sunday, I went privately to wish them joy, my Lord being very ill; so I saw them alone in the bedchamber. The Prince asked me what Lord Cowper said to the Duke of Somerset's being put out? I said, 'he knew nothing of it.' He said, '*No more did I, for I opposed it once when it was named, and so they kept it from me.*' I said, '*that was my Lord Cowper's case.*' The Prince said a thousand kind things of my Lord Cowper, and so did the Princess, and the Prince bid me tell him 'he wished he would not lay things so much to heart; that he looked upon him as an old courtier, or else he had imparted some of his experience to him, which was, when the King sided with what he thought not right to endeavour to prevent it, and when he could not, to go on cheerfully; and tell him when I come to the King, all things shall go to his mind, and in the mean time, whenever he has a mind to take t'other pull on the Cabinet Council, I'm ready to keep his back hand.' The Princess made as many expressions as the Prince had done; but by some words the Princess let drop, I perceived that she had been talked to by Baron Bernstorff for meddling with what had been doing."—"*14th Feb.* 1716. The news was confirmed yesterday, the Pretender is gone. My Lord Cowper is so ill that he has a mind to quit office. I have made a resolution never to press him more to keep his place."—"*15th.* My Lord mighty ill, and still had a mind to quit office. I told him I would never oppose any thing he had a mind to do, and after arguing calmly upon the

matter, I offered him, if it would be any pleasure done him, to retire with him into the country, and quit too, and, what was more, never to repine at doing it, though it was the greatest sacrifice that could be made him. I believe he will accept it." — "16*th*. My Lord still ill. Mr. Woodford wishes I should let him hint to old Mr. Craggs that my Lord Keeper's office was too hard for him, and mention the former offer, that, if my Lord was weary, he might be Privy Seal, and that my Lord Chief Justice Parker would come into my Lord Cowper's place." — "17*th*. My Lord better, and not talk so much of quitting." — "18*th*. My Lord better, to my great joy. No talk of quitting to-day, though I fairly laid it in his way." — "*Feb.* 29*th*. M. Robethon spoke to me to propose to Lord Cowper to change Chancellor for President of the Council. I have spoke, and he refuses it, and says if they will have him quit he'll do it, but he will not change. I represented to M. Robethon it would be a great difficulty to persuade him to be President of the Council, not speaking the French tongue. He replied, '*Pray use all your art to get it done.*' The Princess bade Mrs. Clayton tell me that Baron Bernstorff had been with the Prince, to persuade him to agree to make my Lord Cowper President of the Council, but the Prince absolutely denied going into it unless my Lord Cowper desired it and insisted upon it, and the Princess bade Mrs. Clayton say that the ministry should never draw them into or force them to give consent to any thing that was against my Lord Cowper's inclination. I gave the Princess a thousand thanks, and desired a continuation of her favour, and said it was utterly against my Lord Cowper's inclination, who was ready to quit if they had any body better to put in his room, but would never change that which he could acquit himself of with honour, for that which he could not perform at all." — "*March* 3. The Princess told me that Baron Bernstorff told her that minute that it was never designed to remove my Lord Cowper; that the change was meant him as a favour, and that it was one of my Lord Cowper's jealousies." — "*July* 7. The King went in the morning, and the Prince in the coach with him. Almost all the great officers followed, except the Chancellor, who was obliged to sit in the cause

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room that morning. In the morning, at Court, the Princess bids my Lord Cowper come to the Prince, for he has confidence in no body else."—"*July* 8. My Lord Cowper with the Prince almost two hours. He promises to hear him in every thing. My Lord Cowper persuades him to live well with all those he thought had not done their duty, because it was for the good of the whole. He promises him to do so; he tells my Lord Cowper he should not have known what to have done without me, who had been very necessary to him, and had done purely."—"*July* 10. The Princess told me that the King had told her that the Prince had as ill an opinion of my Lord Cowper as the rest. But he added, 'he may trust him; he's a very honest, disinterested man; he and the Duke of Devonshire are the only two men I have found so in this kingdom.' Mrs. Clayton said to me to-night she heard that Lord Cowper was going to lay down. I answered, 'he is, they say, to be turned out, and they need not have given themselves that trouble; if they had but hinted to him that they were weary of him, he would have laid down; they know he has done that once already, which is more than ever will be said of them, and upon occasion he can do it again. She repeated this to the Prince."

Conferences of Lord Cowper with Baron Bothmar.

The King used to send Baron Bothmar, who could speak English in a certain fashion, to confer with Lord Cowper respecting his differences with the Prince and the general aspect of affairs.* The Chancellor always expressed, and very sincerely, the greatest devotion to the King's service; but there was a want of cordiality between him and the King, and even between him and his colleagues. In a letter to Lord Townshend, in September 1716, he says, "Several of the long robe have affected, with some success, to let me see they could find a way to the favours of the Crown without so much as my knowing it. This their practice, I sin-

* Lord Cowper used to prepare himself for these conferences by previously writing down the substance of what he was to say at them. I hold in my hand one of these papers, entitled "Notes for Conference with Baron Bothmar, 31st Dec^r. 1716." It thus begins: "Not frō attachm^t to L^d T. The contrary. Not for myself, &c. But on this great Crisis on w^ch King's hap. depends, &c."

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cerely assure your Lordship, I never thought so much improper on my own account, or from any taste I have of power and dependance, or jealousy, on that head, but purely from an apprehension that the Crown and public cannot be so well served if the lawyers are allowed to think their fortunes may be made without the Chancellor's concurrence."

Lord Cowper's letters to Lady Cowper.

Some of his letters to his wife at this period likewise give a pretty clear insight into his position and the state of parties. Thus, on the 16th of August, 1716, he says to her: "I beg you to present my humble and sincerest duty to the Prince and Princess. I fear I may suffer there by not being more at Court; but you know I went but once a fortnight in the Queen's time, and I am sure 'tis impossible for me to hope to bear the fatigues of the season of public business if the little vacation I have should be most of it spent on the road, or in the inconveniences attending a lodging and court hours. Besides, I assure you, the presence of one of us here is necessary in respect of the children; your sister is prudent, but they don't stand in awe of her, and there was no living *till the birch was planted in my room, where some little action has diminished it.*" — "1st September, 1716. I congratulate with you on the good news you send me, that the Prince has given so right a turn to that occurrence which would, any other way, have produced ill effects, and is now likely to do much good. I verily think there is not a surer sign of a mind capable of erecting a solid glory than its being able seasonably to avoid the frippery appearance of it; and 'tis plain that, if it be not our own fault, we may often be sensible of the good effects of the Princess's taking part with right reason whenever 'tis in danger of being run down. Her understanding will never let her be deceived if she has an opportunity of hearing both sides of the question. As for her kind expression, that my opinion had some weight in this matter, you know my taste so well as to believe it pleases me above any thing the Court can give me, to think I have helped to stem a mischief which was coming upon a cause I have so much at heart. If, encouraged by this, I should appear forward to exert myself, as having H. R. H. favour in a degree above others, it might

bring on me such a load of jealousy and envy as would probably, in a little time, incapacitate me from serving him half as much as I may be able to do by seeming dull and inapprehensive of my advantage; and therefore, if ever that notion be started any more, you may truly, and, I hope, wisely, frame my excuse for not taking more upon me, from what I have above said on this head. They may let a careless disinterested man perhaps enjoy the Prince's favour in quiet, but an ambitious busy man they never will. If Providence should call him to the Crown while I have health and any degree of understanding left, I would dedicate them and all my time towards making him great, and would rely on my own integrity and his justice for my support. But, in our present situation, I think I must not only seem not elated with, but scarcely sensible of, his goodness to me."

Notwithstanding Lord Cowper's great anxiety to conceal his anticipations of power in the next reign, his intimacy with the Prince was more and more suspected, and caused him to be looked upon coldly at St. James's, though he was not so imprudent as to show himself at Leicester House.

Lord Cowper opposes bringing in of bill to make the Prince dependent for income upon the King.

The proximate cause of his retirement appears to have been his opposition to a bill which, without consulting him, it had been proposed should be brought in, and recommended by a speech from the throne, — to give 100,000*l.* a year to the King, "whereof he was to allot any portion he might think proper for the support of the Prince." The bill and the speech being shown to the Chancellor late at night, he next morning sent the following letter to the King, in bad Latin; this being the only dialect which they understood in common:

Latin Letter from Lord Cowper to George I.

"11. Jan. 1717.

"Hesternâ nocte mandato M. Vræ Billa & oratio designatæ habeñ in Parl° ostensæ sunt.

Breve tempus ad perpendend. rem tam arduam.

Ratio sufficiens tum visa est allegañ ad probandum quod M. V. orationem aliquā haberet introductivā; *si Consultū visum foret ut talis Billa introducatur.*

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De Billâ ipsâ nullā tum tradidi opinionem præterquam quasdam objectiones, genere deliberativo, quæ mihi extempore occurrebant.

Una observatio fuit (& quæ quodāmodo concedi visa est) Qd quamvis Billa paratur *indefinitè*, ad submittendū Regis dispositioni tantū pensionis (100,000 per an.) quantū ipsi placeret, tamen non plus potest expectari, quam ut pars sufficiens sustentationi Juvenū Princ. ita submitteretur, quoniā aliter tota pensio (refigeretur vel) precaria redderetur quod, audivi omni ex parte concedi, hominū animis tentatis, non posse attingi.

Exposito qd fructus hujus experimenti non alius esse potest quam appropriatio quædā sufficientis partis in educatione Principū, (quam non par est credeñ Principem unquam recusaturū.)

Questio huc devenit, An tam parvi cōmodi causâ pretm̄ sit?

Objectiones. — 1. Minuere quodāmodo Majestatē Vām appellando Populū; prertim in re adeo tenerâ versus Filiū etc.

2. Dare Licentiam a Throno membris utriusq; Domûs loquendi de hoc subjecto quæ velint, et movendi quæstiones non gratas de educatione Principis in Germania.

3. Ciere turbas, motusq; animos acerrimos, qui in disputationibus necessarie surgent.

4. Minuere numerū fideliū amicorū M. Vræ: nam quot ex illis putabunt provisionem illius Billæ, vel impugnare proprietatem vel punire delictū ultrà modum, & ideo, vel aliis rationibus recusabunt dare suffragia cum ministris V. M. exinde putabunt se male acceptos, & consequenter fient malecontenti; fundamentū Throni jam jam nimis arctatur.

5. Dare exemplar invadendi Lege latâ proprietati subjecti; quod fiat, si plus pecuniæ approprietur, quam sufficit sustentationi Liberorū; & e contra id solumodo efficere, nil valet.

6. Rem agredi, nullo exemplo comprobatam, quamvis in historiâ similes offensæ *Casus* non desunt, &c.

7. Movere novos Sermones de hâc materiâ, pretentis ali-

quantum sopitis; non tantū in Brit. verū etiam in aliis mundi partibus. Hoc ut puto afficiet authoritatem vram partibus exteris; si in tali subjecto Parl. foret prope equalit divisū: — Cujus unanimitas *hucusq;* tantū ponderis dedit. Itaq; mea sententia est, QD NON

Et qd tanta incurrere mala & pericula, tam exigui, si alicujus, cōmodi causâ, non mihi, submisse dico, prudens futū videtur nec tanti; quod tamen judicio V. M. & potioribus sententiis alior̄ Ministrorū humiliter submitto." *

* The paper is indorsed in Lord Cowper's handwriting: "Latin Letter to K. G. I[st]. dated 11. Jan. 1707." I attempt a translation: —

"Last night, by your Majesty's order, the Bill to be brought forward in parliament and the Speech were shown to me.

A short time is allowed me to consider a matter so weighty.

The reason alleged then seemed sufficient to prove that your Majesty should make a speech to introduce the Bill, *if it should be resolved that such a Bill is to be introduced.*

Respecting the Bill itself I then delivered no opinion, beyond some objections for consideration which occurred to me at the moment.

One observation was (and which seemed to be conceded), that although the Bill is framed *absolutely* to submit to the King's disposal so much of the pension (100,000*l.* per an.) as he should please, yet no more can be expected, than that a part sufficient for the support of the young Princes should thus be submitted, since otherwise the whole pension would be (annulled or) rendered precarious — which I have heard agreed on all hands, public opinion being sounded, cannot be carried.

The result of this experiment can be nothing else than an appropriation of a sufficient part in the education of the young Princes (which it is not credible that the Prince of Wales would ever refuse).

The question comes to this, whether it be worth while to proceed for so small an advantage?

OBJECTIONS. — 1. It would degrade your Majesty in some measure, to call in the people to judge, particularly in so delicate an affair, between you and your son, &c.

2. It would be to give leave from the throne to the members of both Houses of speaking on this subject what they please, and of stirring disagreeable questions respecting the education of the Prince in Germany.

3. To collect mobs, and inevitably to rouse animosities in debate.

4. To lessen the number of your Majesty's faithful friends: for so many of them as shall think that the provisions of the Bill are generally improper, or in this instance would be an excessive punishment of a fault, and for these or other reasons shall refuse on this occasion to vote with your Majesty's ministers, will henceforth think themselves ill looked upon, and consequently will become discontented; the foundation of the throne is already shaken.

5. To give an example of invading by act of parliament the property of the subject, which will be the case if more money is appropriated than is necessary for the maintenance of the children; and, on the contrary, confined to that, the Bill has no operation.

6. To undertake a measure not recommended by any precedent, although in history similar cases of offence are not wanting, &c.

7. To stir up new discussions respecting this matter (which had nearly gone to sleep) not only in Britain but in other parts of the world. This I conceive will lessen your credit in foreign parts, if upon such a subject parliament should

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The Bill which would have been so offensive to the Prince and his friends was abandoned, but it was resolved that Lord Cowper should no longer remain in office.

Lord Cowper's last interview with George I.

On the 15th of April, 1718, at an audience in the royal closet at St. James's, he finally resigned the Great Seal, and kissed his Majesty's hand on his elevation to an earldom. * His Diary having ceased at the commencement of this reign, and Lady Cowper's MSS. for 1718 being lost, we unfortunately know nothing of the adieus of the Sovereign and the retiring Chancellor.

The same evening he received the following letter from Stanhope, then considered the prime minister:—

"Cockpit, April 15th.

"My Lord,

Lord Stanhope's letter to Lord Cowper upon his resignation.

"I was extremely concerned to find, at my returning here this evening, the letter your Lordship had done me the honour to send to me. If it had been possible to imagine that your Lordship was determined, on account of your health, to be eased of the very great fatigue which attends the office you have resigned, I am sure I should have been most intent upon suggesting to the King, and to your Lordship, some expedient that might have kept your Lordship at the head of † consistently with more ease to yourself; and I should, I am confident, in that have had the hearty assistance of my Lord Sunderland, and of every one in the King's service; and I will still hope that your Lordship will

be nearly equally divided, unanimity hitherto having given so much strength to your government;

Therefore my opinion is, No!

And with all humility I must say that it does not seem to me prudent nor worth while for so small an advantage (if any may be hoped) to incur so great evils and perils. All these things however I humbly submit to the judgment of your Majesty, and the better opinions of your other ministers."

I am not sure that I have always understood the meaning of this epistle. I have only the rough draught of it, with obliterations and abbreviations. I wish there had been preserved a specimen of George's Latinity — which I dare say was quite equal to that of the Chancellor, although his Majesty must have been a good deal puzzled with some of our parliamentary *slang*.

* The preamble of the patent was drawn by Hughes in terms of high eulogium.

† Illegible word.

so far indulge your servants as to allow them to think whether some happy turn of that kind may not be given. This sudden resolution hath so startled me, that I really do not well know what to write to your Lordship; but as I judge a most honest and necessary maxim to be 'non desperare de republicâ,' so will I not despair of seeing my Lord Cowper soon again in the King's service. I am, with as sincere a respect as is possible,

"My Lord,
"your Lordship's
"most humble and
"most obedient Servant,
"STANHOPE."

But notwithstanding this flummery, Stanhope, to gratify the King's humour, was much delighted with Lord Cowper's retirement, and heartily assisted in smoothing away all difficulties in the way of the appointment of a successor, who by taking a decided part against the Prince had entirely gained his Majesty's confidence.

Lord Cowper retires into the country.

Parliament having been previously prorogued, the moment that Lord Cowper had got rid of the Great Seal he hurried off to his house at Colegreen, in Hertfordshire, to enjoy his gardens and his woods, which for a time he thought he preferred to all the glittering objects of ambition.

While the Ex-chancellor saw with less regret the fate of some of his officers, he showed his respect for literature by an effort in favour of Hughes, the poet, whom he had appointed one of his secretaries, and for whom he thus implored mercy from Lord Parker, his successor: —

Lord Cowper's letter to Lord Macclesfield in favour of Hughes the poet.

"My Lord,

"Of the many that were losers by my resigning the Great Seal, I shall venture to recommend but one gentleman to your Lordship, the bearer, Mr. John Hughes, who served for some little time in the office of Secretary for the Commissions of the Peace; — and I should not do that but for two reasons; the one, that he had hardly served long enough to make him amends for preparing to execute that trust; the

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other, that I am convinced from the little time he did serve that your Lordship, if you continue him in that service, will thank me for having recommended him; and your so doing will be also a great obligation on

"Yours, &c.

"COWPER.

"I most heartily wish your Lordship much joy."

The application succeeded, and the grateful bard, in an imitation of Horace, thus sung the praises of his patron. *

Lines by Hughes on Lord Cowper.

"Let Fame be silent, only tell
That gen'rous Cowper loves me well;
Thro' Britain's realms I shall be known
By Cowper's merit, not my own:
And when the tomb my dust shall hide,
Stripp'd of a mortal's little pride,
Vain pomp be spar'd, and ev'ry tear;
Let but some stone this sculpture bear:
'Here lies his clay, to earth consign'd,
To whom great Cowper once was kind.'"

Falling dangerously ill soon after, Hughes, in further proof of his gratitude, sent his portrait by Sir Godfrey Kneller to the Ex-chancellor, who thus courteously acknowledged his obligation:

"Sir,

"I thank you for the most acceptable present of your picture, and assure you that none in this age can set a higher value upon it than I do, and shall while I live; though I am sensible posterity will outdo me in that particular.

"With the greatest esteem and sincerity,

"Your most affectionate Servant,

"COWPER.

"I intend to wait on you very quickly, if I hear you are well enough to be troubled with me."

Letter of congratulation from

In an interval of pain, Hughes wrote him another letter in which he said: "I congratulate your Lordship on your being so honourably eased from a very great burthen, the

* Lib. ii. Ode 20.

constant fatigue of which must have made it uneasy, and might have proved prejudicial to your health."* The Ex-chancellor received similar felicitations from other friends, and he professed merrily to respond to them; but I strongly suspect that he would have been better pleased to have gone on bearing the "burthen" and the "fatigue," from which he was relieved, if he could have done so without dishonour.

Hughes to Lord Cowper.

He survived rather more than four years, never returning to office, but still devoting himself to the public service. "Non fuit consilium socordiâ atque desidiâ bonum otium conterere; neque vero agrum colendo, aut venando, servilibus officiis intentum ætatem agere."† Nor did he, like some Ex-chancellors, waste his days in listless discontent, or in counting over the money in his chest, or in vain efforts to regain court favour. He attended to his duties in parliament with unabated energy, and when his presence was wanted for the judicial business of the Privy Council, he was always ready to assist.

Lord Cowper again an Ex-chancellor.

If he quitted office having had no quarrel with his colleagues, differences of opinion soon sprung up between them;—and (generally with reason on his side, though sometimes, I fear, actuated by personal pique,) he exerted himself to thwart most of the measures which they brought forward. His first display of opposition, though excusable, considering the sentiments which then generally prevailed among enlightened statesmen, tempers our admiration of his regard for religious liberty. The subsisting government was more favourable to true toleration than any England ever knew prior to that of Earl Grey in the year 1830. Stanhope and Sunderland were at the head of it, with pretty equally divided power. The former has the merit of originating a measure which, if it had passed as he projected it, would have placed Dissenters and Roman Catholics (as far as all civil rights are concerned) on the same footing of equality with members of the esta-

He opposes the measures of government.

Liberality of Lord Stanhope.

* Hughes, likewise a few days before his death, dedicated to Lord Cowper his "Siege of Damascus," the success of which, when first represented, he heard as he expired.

† Sall. Cat. c. iv.

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blished Church which they now happily enjoy. He wished not only to repeal the "Schism Act," which had disgraced the close of the reign of Queen Anne, but the "Test and Corporation Acts," passed in the reign of Charles II., in violation of the "Declaration of Breda;" and he actually obtained the consent of the King and the cabinet to introduce a bill for this purpose. But the novel spectacle was exhibited of a government being much more liberal than the opposition, and even than many of its own supporters. The news of such a measure was received with horror by the High Church party, and many good Whigs thought that it went a vast deal too far; insomuch that the Dissenters themselves soon agreed that the total repeal of the "Test and Corporation Acts" should be deferred, Stanhope pledging himself to move this hereafter, at *a more favourable opportunity;* and that the bill to be now brought in should only mitigate some of their more obnoxious clauses, and totally repeal the "Schism Act." A bill, so framed, was introduced by Stanhope in the House of Lords as soon as parliament met. When he had ably explained and defended it, he was zealously supported by Sunderland; but I am deeply concerned to say that, in as far as it did more than simply repeal the "Schism Act," it was strenuously opposed by Lord Cowper, who said "he had no manner of prejudice against the Dissenters, but rather a tender regard for them; that as he had been bred in, so he had ever communicated with, the Church of England, which he believed to be the best Protestant church, and the most agreeable to the primitive pattern of Christianity; but that however, if he had happened to be at Geneva, he would not have scrupled to have communicated with the Protestants there; that he was disposed to afford the Dissenters as much ease as was consistent with the safety of the constitution in church and state, and would readily give his vote for the repealing of the 'Schism Act;' but that he could not but oppose that part of the bill, which now lay before them, whereby parts of the 'Test and Corporation Acts' were done away with, because he looked on those acts as the main bulwark of our excellent constitution in church and state, and, therefore, he would have them inviolably preserved." The venerable

Dec. 1718. Lord Cowper supports the Test and Corporation Acts.

Hoadly, Bishop of Bangor, in a truly Christian spirit, stood up for the cause of religious liberty, contending that the principles on which the laws to be abrogated rested would justify all the heathen persecutions of the converts to the religion of Jesus, and all the horrors of the Popish inquisition.* But the government was obliged to follow the line which Lord Cowper prescribed, and, when all the clauses had been struck out except the simple repeal of the "Schism Act," the third reading was carried only by a small majority. Stanhope's descendant, inheriting much of his genius and his liberality, remarks, that "the 'more favourable opportunity' promised the Dissenters for the repeal of the Test and Corporation Acts never came. Those acts remained on the statute book one hundred and nine years more, but remained only like rusty weapons hung in an armoury, trophies of past power, not instruments of further aggression or defence." † This observation is correct with respect to the holding of offices under the Crown, but from municipal offices Dissenters were effectually excluded till Lord John Russell's triumph, in the year 1827.

He opposes the Peerage Bill.

Lord Cowper ere long redeemed himself from this aberration by his noble stand in the House of Lords, almost single-handed, against a most reprehensible measure, which was very cordially received there, — being brought forward with all the strength of the government, and being supposed to be favourable to the power and dignity of their Lordships — Sunderland's celebrated PEERAGE BILL — whereby it was to be enacted that the existing number of English Peers should never be increased beyond six, with an exception in favour of Princes of the blood; that for every extinction there might be a new creation; and that instead of the sixteen elective Peers from Scotland, the King should name twenty-five to be hereditary. It is difficult for us to con-

* He was seconded by three other Bishops, Willis, Gibson, and Kennet, the last of whom warned his brethren against imitating the prelates in the time of Charles I., who, by supporting arbitrary measures and persecution, first brought scandal and contempt upon the clergy, and at last ruin both on church and state.

† Lord Mahon, vol. i. p. 494.

CHAP. CXVII. jecture the real reasons for which this unconstitutional measure was so eagerly brought forward, and so obstinately pressed. Lord Oxford's creation of twelve Peers to carry a vote in favour of the peace of Utrecht, was much talked of; but the possibility of abusing a prerogative of the Crown could not weigh much with a minister in whom the exercise of that prerogative was actually vested. The solution is probably to be sought in the enmity of the heir apparent to the present government, and Sunderland's hope that by insuring the continuance of a majority at his command in one chamber of the parliament, he might thereby perpetuate his own power.

The country seems to have been nearly as much agitated by this measure for altering the constitution of the House of Lords, as it was in our time by the "Bill for reforming the Representation of the People." Addison plausibly defending it in the "Old Whig," and Steele successfully assailing it in "The Plebeian," it was the cause of a breach in the friendship between those two eminent and amiable men. In the House of Lords it was highly extolled on account of its supposed oligarchical tendency, although, by stopping the infusion of fresh blood, it must in another generation have reduced that House to utter imbecility and insignificance. Lord Cowper, from the first and during its whole progress, most strenuously opposed it.
March 3. 1719. In his earliest speech against it, he appears to have made the greatest impression by attacking what I should have thought its least vulnerable enactment,— to make Scotland be represented in the Upper House by hereditary instead of elective Peers,—but he was much applauded while he denounced the change as a violation of the Union, and he pointed out the deplorable condition of the excluded Scotch Peers, who would be reduced to a worse condition than any other subjects, since they would neither be electors nor elected, neither representatives nor represented.* In consequence of this opposition, when the bill stood for a third reading, it was dropped, — on the alleged ground that, from being so

* 7 Parl. Hist. 591.

misrepresented and misunderstood, its merits were not likely to be fairly considered in the Lower House.

Nov. 25. 1715.

But in the new session, which began in the autumn of the same year, it was again introduced, when Lord Cowper again vigorously opposed it, throwing out some dark hints as to the motives of its supporters, and concluding with the observation, that, "for his own part, he could not help being of opinion that if there were no secret meaning in this bill, some men would not be so pressing for it."* He met with so little support, that he did not venture to divide the House against it in any of its stages. But the Peers were saved from the effects of their own infatuation by the unanimous abhorrence of the measure which animated all the wives and daughters of members of the House of Commons, and by the most rhetorical speech ever delivered by Sir Robert Walpole,— beginning with these memorable words, "Among the Romans, the wisest people upon earth, the Temple of Fame was placed behind the Temple of Virtue."†

Lord Cowper's sagacity with respect to the South Sea scheme.

In the following year Lord Cowper showed his sagacity by strenuously, though ineffectually, opposing the South Sea Bill,— which excited a spirit of gambling unequalled till the speculations in railway shares,— which in the result brought ruin on thousands of families and almost subverted the national credit,—but which was expected to produce riches and prosperity till then unknown in the world. He compared it to the Trojan horse, ushered in and received with great pomp and acclamations of joy, but contrived for treachery and destruction:

——— "Scandit fatalis machina muros,
Fœta armis. Pueri circum, innuptæque puellæ
Sacra canunt, funemque manu contingere gaudent.
Illa subit, mediæque minans illabitur urbi.
Instamus tamen immemores cæcique furore,
Et monstrum infelix sacratâ sistimus arce."

Jan.9.1721.

When the bubble burst, Lord Cowper concurred in the punishment of the Directors of the South Sea Company, but animadverted with much severity upon the government that

* 7 Parl. Hist. 607.

† The bill was rejected in the Lower House by 269 to 177, Lord Cowper's brother, Spencer, voting with the majority. 15 Parl. Hist. 624.

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had enabled them to commit such frauds, and to create such mischiefs.*

Feb. 9. 1721. Introduction of practice of putting questions to Ministers in parliament.

I mention his next appearance in the House as the earliest instance I find recorded of the practice now so prevalent of putting questions in parliament to the Ministers of the Crown. There being a report that a gentleman of the name of Knight, against whom the House of Lords wished to take some proceedings, and who had absconded, had been arrested in Brussels, upon the application of the English resident there, Lord Cowper rising in his place, mentioned the report "which being a matter in which the public was highly concerned, he desired those in the administration to acquaint the House whether there was any ground for that report?"† Lord Sunderland then stated that the report was true, and informed the House in what manner Mr. Knight had been apprehended and secured — taking credit to the government for the promptitude and energy they had exhibited.‡

Call of the House of Lords.

It appears by a proceeding the same year, which Lord Cowper strenuously supported, that a wholesome practice then prevailed in the Lords and Commons, which has unfortunately now fallen into desuetude,— being merely talked of in one House, and being absolutely forgotten in the other — of fixing a day for calling over the House, and actually compelling the attendance of all members during the debate and the division.§

Dec. 13. 1721. Lord Cowper tries to reform the quarantine laws.

The idea that law Lords are only to discuss questions of law was scorned by Lord Cowper, and he now introduced a bill for relaxing the regulations respecting quarantine, which he represented as ineffectual, unnecessary, vexatious, odious, and basely copied from the arbitrary law of France. The bill being thrown out by the government, he was joined by many Peers in a spirited protest, describing its merits, and exposing the motives for its rejection.‖ He likewise took a very active part in a debate, and a protest respecting the management of the navy.¶

Jan. 13. 1722.

* 7 Parl. Hist. 698.

† I know not when the existing form of commencing the question was established:—"Seeing the R^t Ho^nble gentleman or the noble Lord in his place," &c.

‡ 7 Parl. Hist. 709.

§ Ibid. 921.

‖ Ibid. 933.

¶ Ib. 939.

Scene in the House of Lords produced by the absence of Lord Chancellor Macclesfield.

A few days after there was a scene in the House which showed the existence of considerable ill will between him and his "noble and learned friend," who succeeded him. The House had been adjourned to the 3d of February, at eleven o'clock, then the usual hour to meet for business, instead of seven or eight, as in the good old times. A considerable number of Lords assembled, but no Lord Chancellor appeared, and Lord Chief Justice Sir Peter King, commissioned to sit in his absence, was likewise absent. At last, Lord Cowper, in the exercise of the undoubted right of the Lords, in default of the Lord Chancellor, or a Speaker specially authorised by the Crown, to choose a Speaker for themselves, moved, first, that the Duke of Somerset, as the Peer of highest rank, and then, that the Duke of Kingston, should take the woolsack as Speaker; but they successively ran out of the House as soon as their names were mentioned. Lord Cowper then made the same motion with respect to a law Lord, Lord Lechmere, who had been made a Peer without having held any higher office than that of Attorney General and Chancellor of the Duchy of Lancaster, and is long ago forgotten, though he moved the impeachment of the rebel Lords, led the opposition against Walpole, and was famous in his day. After a short debate, the question was about to be put, when the Mace and the Great Seal presented themselves to the House, and were followed by the Lord Chancellor. "Puffing and blowing, he took his seat on the woolsack," and having observed some uneasiness among the Lords, he acquainted their Lordships, "That he having been summoned to attend his Majesty at St. James's, had accordingly waited upon his Majesty there, where he was detained longer than he could foresee by his Majesty's command; and that as soon as he was at liberty he came hither with the utmost expedition; and asked pardon for his stay of the Lords, who had been so long kept in expectation of him." But several opposition Lords declared this excuse to be wholly insufficient, and one of them, prompted by Lord Cowper, moved "That the House, to show its indignation at the affront offered to it, should immediately adjourn to Monday without transacting any further business." But the motion being

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put, it was negatived by a majority of 49 to 31. Lord Cowper thereupon drew, and with other Peers signed a protest, which, after reciting the facts,—with the Lord Chancellor's excuse,—thus proceeded: "which excuse, though it might in great measure free the Lord Chancellor from the imputation of wilful neglect of duty, yet it seemed to us in no degree to justify the indignity which we think was upon the whole matter done to the House, which is undoubtedly the greatest council in the kingdom, and to which all other councils ought to give way; and therefore the business of any other council ought not to have detained the Speaker of this House after the hour appointed for its meeting, and during the time of the day the House has usually of late spent in business; and as we venture to say the dignity of this House has not of late years been increasing, so we are unwilling that any thing we conceive to be a gross neglect of it should pass without some note on our records — which we thought would have been in some measure attained by an immediate adjournment." *

Unfounded rumour that Lord Cowper had turned Jacobite.

Bitterness of feeling between Lord Cowper and his late colleagues becoming more intense, they spread reports that he had coalesced with the Tories, and was even plotting with the Jacobites,—for which there was not the slightest colour, except that, in opposing some of the measures of the government, he had found himself dividing with the Earl of Oxford and Bishop Atterbury. Most preposterous hopes were entertained by the exiled royal family that Lord Cowper might be brought to espouse their cause; insomuch that the Earl of Mar, and James himself, wrote him letters filled with solicitations and promises, but these he treated with neglect and contempt. However, when a discovery was made of Layer's conspiracy to restore the Stuarts by a French invasion, and he was examined in the Tower by a ministerial committee of the House of Commons, he thought to ingratiate himself with the government by implicating some of the discontented Whig lords, and he said "he had been told by one Plunket, a friend of the Pretender, that Lord Cowper had sent in his adhesion to that Prince, and that, along with

* 7 Parl. Hist. 960.

seven other lords and six commoners, he formed a cabinet, under the name of BURFORD'S CLUB, for carrying on the government in his name." This information, however improbable or incredible, was eagerly caught at by the Committee, and conspicuously blazoned forth in their report, which was twice read aloud in the House, printed in the votes, recorded in the Journals, and industriously circulated over the kingdom.

March, 1723. Lord Cowper complains to the House of Lords.

Lord Cowper thereupon made a formal complaint upon the subject in the House of Lords. He said, "that little regard had been shown to divers members of that illustrious assembly, whose honour and reputation had been attacked by the Report from the Secret Committee of the House of Commons, — being represented, on mere hearsay, as privy to treasonable designs against the government. Having been raised, however unworthily, to the dignity of a Peer, he considered himself bound to defend the rights and privileges of the peerage of England, which they held by the fundamental law of the land, and which were confirmed to them by MAGNA CHARTA. After having, on so many occasions and in such difficult times, given undoubted proofs of his hearty zeal and affection for the Protestant succession, and of his attachment to his Majesty's person and his dynasty, he had just reason to be offended when he saw his name bandied about in a list of a chimerical club of disaffected persons, on the hearsay evidence of an infamous man, charged by the committee themselves with having, to magnify the number of the Pretender's friends, inserted in lists of his supporters the names of well-affected persons, without having the least authority for so doing." Having attempted to throw some doubts on the whole of the conspiracy, he concluded by moving, "that the persons supposed to have given the information to Layer should be sent for, and examined at the bar of the House respecting the truth of this charge."

Lord Townshend, on the part of the government, insisted that, "as the noble and learned Earl's name was mentioned in the examination of Layer, there was an absolute necessity that it should be introduced into the Report, but the Committee had declared their entire conviction of his

Lordship's innocence, so that his reputation could not have suffered in the manner he had supposed: farther inquiry was therefore unnecessary. But the House must have been much surprised to find that a noble and learned Peer, whose abilities and merit had justly so great weight in that assembly, should upon a trivial circumstance ridicule as a fiction a horrid and execrable conspiracy supported by so many concurring proofs." —The motion was negatived by a majority of 81 to 26. Lord Cowper having entered a protest in the Journals against this decision, signed a solemn declaration, "upon his HONOUR, that the statement was false."* Layer notwithstanding this service, was convicted and executed.

Lord Cowper opposes bill for banishment of Atterbury.

It may well be believed that Lord Cowper would vigorously oppose the Bill of pains and penalties against Atterbury, however much he might condemn his principles. This bill did not affect the life of the party accused, going no farther than to deprive him of all his ecclesiastical preferments, to banish him, and to make it felony to correspond with him without the King's licence. No one doubted that by overt acts to bring in the Pretender, he had actually been guilty of high treason, yet there was no sufficient legal evidence against him upon which he could be convicted judicially before a criminal court, and reasonable men regarded with disapprobation and alarm the precedent of legislating penally against a political enemy. We have a fuller account of Lord Cowper's speech on this occasion than of any other he ever delivered. A few extracts from it will display its character and merit:—"I am, my Lords, against this bill, not only because I think nothing has been offered sufficient for the support of it, but because I think the honour and dignity of the Crown, of this House, and of the House of Commons, concerned in the event of it. That House began by voting the Bishop, without hearing him, guilty of high treason, and then, instead of impeaching him, or leaving him to the ordinary course of law, they make themselves his judges as well as his accusers, and pass

* This document, which was printed and extensively circulated, was thus entitled:—"The Declaration of William Earl Cowper, showing that the matters contained in some hearsays relating to him in the examination of Christopher Layer are false and groundless." See 8 Parl. Hist. 204. 15 St. Tr. 94—693.

sentence of condemnation upon him. Your Lordship's privileges are invaded, for in you is vested the supreme judicial power. And in what a situation does this course of proceeding place his Majesty, who is to be called upon to give his royal assent to a bill for the utter ruin of one of his subjects, without any means of knowing the evidence on which it rests.* Where is now the necessity for this unconstitutional interference? The alleged culprit stands at your bar, and has never attempted to fly from justice. If there be legal evidence against him, let him be legally convicted; without legal evidence he must be wrongfully condemned. I expected to have heard from the Right Reverend Bench, that to make or deprive Bishops is no part of the business of the state; and it must be owned that if the Parliament can properly deprive this Bishop, we are equally authorised to make another in his room. I can guess at no advantage which the Church can derive from this bill, except that it will cause a vacancy in the Deanery of Westminster and in the See of Rochester."† After a very minute and masterly analysis of the evidence adduced in support of the bill, he thus concludes:—"My Lords, I have now done; and if upon this occasion I have tried your patience or discovered an unbecoming warmth, your Lordships will impute it to the concern I am under lest, if this bill should pass, it should become a dangerous precedent to after ages. My zeal as an Englishman for the good of my country, obliges me to set my face against oppression in every shape; and wherever I think I meet with it (it matters not whether one man or five hundred be the oppressors), I shall be sure to oppose it with all my might; for vain will be the boast of the excellency of our constitution, in vain shall we talk of our liberty and our property secured to us by law, if, when it

* This is a sophistical subtlety, for the King may be present and is supposed to preside in the High Court of Parliament. Besides, he is to act by the advice of his ministers.

† Pretty well!—but not equal to the sarcasm of Lord Bathurst in the same debate on the Bishops about to vote against Atterbury. "I can hardly account for the inveterate malice some persons bear to the learned and ingenious Bishop of Rochester, unless they are possessed of the infatuation of the wild Indians, who fondly believe they will inherit not only the spoils, but even the abilities of any great enemy they kill."

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suits the purpose of a vindictive majority in parliament, without law or evidence we may be deprived of both. There is a boast in this case that life is spared, but that mercy is very equivocal which bids a man live after depriving him of all for which life is desirable." The bill, however, was carried by a majority of 83 to 43, and the Bishop was banished. The impolicy of this proceeding was rendered more striking by the circumstance of Bolingbroke, an infinitely more dangerous man, who had been openly in the service of the Pretender as Secretary of State,—at the same time, by means of a bribe to the Duchess of Kendal, receiving a partial pardon, and being allowed to return to England. Atterbury, when landed at Calais, finding him ready to embark there, said with a smile,—"Then I am exchanged!"* I cannot find that Bolingbroke and Lord Cowper afterwards met. The former, however, now had an interview with the King, while the latter, although as steadily attached as ever to the Protestant succession and the House of Hanover, seems no longer to have been admitted at Court.

Sir R. Walpole's Bill against Roman Catholics and Nonjurors.

Before he closed his honourable career, there was only one other occasion of his appearing before the public,—when he displayed the same liberal principles and sound judgment which had almost invariably distinguished him. Stanhope and Sunderland were now no more, and the reins of govern-

* Pope, the friend of both, exclaimed,—"This nation is afraid of being overrun with too much politeness, and cannot regain one great genius but at the expence of another." But the Poet had partly contributed to this catastrophe by being such a shocking bad witness for Atterbury, when called at the bar of the House of Lords to prove his character and habits. He afterwards tried to make compensation by the couplet,—

"How pleasing Atterbury's softer hour!
How shines his soul unconquer'd in the Tower!"

Atterbury's best defence is by Swift, who most happily ridicules the evidence of the horrid conspiracy chiefly relied on — of the dog Harlequin, who

"Confess'd as plain as he could bark;
Then with his forefoot set his mark."

To this conspiracy the relentless satirist afterwards alluded in Gulliver's Travels "as the workmanship of persons who desire to raise their own character of profound politicians; to restore new vigour to a crazy administration; to stifle or divert general discontents, and to fill their coffers with forfeitures." Gay joined the tuneful throng in singing the praise of the banished man:—

"See Rochester approving nods his head,
And ranks one modern with the mighty dead."

ment were in the firm grasp of Walpole, who, although far from being of a cruel or bigoted temper, had by no means their enlightened views of religious toleration, and who was willing, for the quiet march of civil government, to foster religious prejudice. Those implicated in the late Jacobite plot were chiefly Roman Catholics, and great odium was incurred by all adherents of the Roman Catholic faith, in the belief that, because James had refused to renounce it to mount a throne, they were all zealously devoted to his cause. Walpole, therefore, as well to gain popularity as money, came forward with a proposal to raise 100,000*l.* a year upon the estates of Roman Catholics. The tax was much approved of in the House of Commons, and was extended to all Nonjurors.

May 20. 1723. Lord Cowper's speech against it.

When the bill to impose it came up to the House of Peers, it was vigorously opposed by Lord Cowper, who contended that whatever gloss religious and party zealots might put upon the measure, those who were to suffer by it must regard it as persecution; they must feel that they were unjustly made to suffer for the crimes of others, and they must be rendered hostile to the government which could sanction such an outrage. He desired their Lordships to consider whether they were not themselves injuring the Protestant cause; for Protestants abroad might have severe hardships inflicted upon them by reason of our persecuting Roman Catholics at home. He said he was informed that the King of Spain and the Regent of France had used their good offices in behalf of those of their own religion amongst us; and as those two powerful princes had given undoubted proofs of their friendship to his Majesty in discovering and quashing the late conspiracy, so they could not but think themselves but indifferently requited if this bill, marking indiscriminately all Roman Catholics for vengeance, should pass into a law. His Lordship added, that no government ever got any advantage by persecuting a portion of its subjects,—of which he gave several instances; and he particularly dwelt upon the ill consequences to France from the revocation of the Edict of Nantes, "whereby many of her wealthiest merchants and most skilful artificers had been driven away

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to employ their capital, and to exercise their industry in rival states; and the object seemed to be that there should be *English Roman Catholic refugees* enriching France and Spain, and plotting against their native country, by whom they had been treated so unjustly." He carried with him a glorious minority of 55 against the ministerial majority of 69—showing, very clearly, that the measure was condemned by the real sense of the House. Lord Cowper's last act as a Peer was to record a protest against it.* In a few days afterwards, the session, which proved to be his last, was terminated by a prorogation.

May 27. 1723.

Lord Cowper in private life, after his resignation.

But we must view him after his resignation in private life. He divided his time between Colegreen and London †; like most well-educated men, relishing the beauties of nature, but preferring the intellectual pleasures of a great metropolis. Although not unacquainted with gardening and farming ‡, he left the management of his country affairs to his "VILLICUS," and when not engaged in the public service, to which we have seen he still devoted himself, he employed

* 8 Parl. Hist. 363. I am much surprised to find Archdeacon Coxe saying,—"Whatever opinions may be formed of this measure according to the strict rules of theoretical justice, *the policy was unquestionable*," when he himself publishes an admirable letter from Speaker Onslow, in which that sound and practical politician, giving an account of the people going to take the oaths that they might avoid the tax, says,—"It was a strange as well as ridiculous sight to see people crowding to give a testimony of their allegiance to a government, and cursing it at the same time for giving them the trouble of so doing, and for the fright they were put into by it; and I am satisfied more real disaffection to the King and his family arose from it than from any thing which happened in that time. It made the Government appear tyrannical and suspicious, than which nothing can be more hurtful to a Prince or lessen his safety." He adds some admirable observations on the general inutility of political oaths.—Coxe's Mem. of Sir R. Walp. vol. ii. p. 93—555. This Bill explains a line in Pope which has puzzled unlearned critics:—

"Fortune not much of humbling me can boast;
*Tho' double tax'd, how little have I lost?*"

† His town house was latterly in Great George Street, Westminster, erected on the building of Westminster Bridge, and then the most fashionable residence for the high nobility, now appropriated to railroad committee rooms. Having had many Chancellors living in the City of London and Borough of Southwark, I shall soon transfer them to Grosvenor Square.

‡ I give a specimen of his directions:—"The weeds in the orchard to be mowed. The little kitchen-garden in the corner to be cleaned. The gooseberry and currant bushes trimmed. The fig-trees, mulberry-trees, and such as seem decaying but not desperate, watered. Stir and clean the borders. Remove trees which are to be removed."

his leisure in the education of his children, and in the society of his professional, political, and literary friends.

Regret that he did not write the "History of his own Times."

From a kindly feeling for him, I could wish that he had been more given to philosophy, and that, after the example of several of his illustrious contemporaries, he had mingled the *belles lettres* with politics. He had before his eyes *politicians* like Bolingbroke and Chesterfield, who were making themselves distinguished as *fine writers*; and *fine writers*, like Addison and Prior, who, with less felicity of amalgamation, had risen to distinction as *politicians*. What an interesting and instructive work he might have left us — ranking him with the most illustrious of his order — if, on his retirement from office, he had sat down and written the "History of his own Times," an undertaking for which he has shown, by several of his compositions, particularly by his "Impartial State of Parties," presented to George I., that he was singularly well qualified! His style is more accurate and flowing than that of his friend the Bishop of Salisbury; he took larger views of constitutional questions; his insight into the character of public men was truer; he had a better opportunity of knowing the real springs of action in parties and individuals, and he was infinitely better qualified to weigh evidence and to detect falsehood. Had he begun with the Trial of the Seven Bishops, giving us an account from personal observation of the Defendants, the Judges, the Counsel, the Jury, and the feelings of the spectators, till the shout of applause arose on the acquittal — and had gone on with his narrative, introducing the sensation produced in the metropolis when the news arrived of William's landing — his own march at the head of a little military band to meet the deliverer — the opinions and wishes of the lawyers in general at this great crisis * — the speedy reaction in favour of the banished despot — the writer's first introduction into the House of Commons — his rise to be the leader of the Whigs there — the state of

* I am afraid he would not have added much to the reputation of our profession; for my investigations lead me to think that they were very slavishly inclined, and that the CHURCH did more for the Revolution than the LAW.

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the borough representation when he proposed to bribe Totness and took refuge in Berealstone — the bitter disappointment of the Tory party, when their leaders betrayed them and became Whiggish in the beginning of the reign of Anne — the cabals in the cabinet after he was her Chancellor — the deliberations on the prosecution of Sacheverell — the dismay of the Whig leaders when they discovered the fatal error they had committed — the revolution in the public mind respecting the continuation of the war — the real views of different parties as to the succession on the Queen's death — the exultation of the Jacobites on the arrival of the King George's German favourites, and the rapacity they displayed — the dissensions in the royal family with which the Chancellor was so much mixed up — the feelings at Court when the Earl of Mar's rebellion broke out, and the old Pretender landed in Scotland — the intrigues for saving the lives of the rebel Lords — the growing favour of Lord Macclesfield with the King — the true circumstances of the historian's own resignation — his motives for opposing the Bill to repeal the Test and Corporation Acts — the manner in which he was regarded when all his prophecies respecting the South Sea scheme had been more than realised — and the ultimate safety of the Revolution settlement and of the new dynasty, by the appointment of Walpole as Prime Minister,—he would have left us a work far more interesting than the gossip of Burnet,— to be placed by the side of the "History of the Grand Rebellion." But he despised authorship, and he is comparatively obscure.

His Letters to his wife.

He now composed nothing of greater magnitude than familiar epistles to his wife. The Countess, continuing in the household of the Princess of Wales, was frequently separated from him while in waiting. Thus he from time to time addressed her: "As for your present condition, I hope, now the regret at parting is over, it is not only easy to you but delightful; it cannot be otherwise while you are with so good a mistress, and from whom you have received such proofs of kindness to you as cannot be counterfeit, whatever some would make you believe: if every body would have counterfeited with me at that rate, I should not have had

any cause to complain. If you discern that any are sowing seeds in your Court that may raise strife, I hope you will use your best endeavours to root 'em out, and when you have so done your duty, you will have more reason to be unconcerned at the event, if it should be unfortunate, than if you had endeavoured nothing. Though when you have done so well, I would not have you so much as hope that there are not those who will represent you as a most intolerable mischief-maker. Slanders which are no more than expected are the easier borne, which makes me foretell this." * "I thank you for your endearing, and, I depend, very sincere expressions; but, considering all things, I think 'tis but reasonable that at least, for variety of living, you should find something more satisfactory in a Court than you can in a retired minister (who you know is always a peevish creature) and so solitary a place." † "The Attorney General puts me in mind of the choice by which they usually try idiots; 'tis to see if they will choose an apple before a piece of gold: the practice of the Attorney General (well performed) is not only of great profit and substantial honour, authority, and credit in the state, whereas being in the list of Privy Councillors is the very emptiest and lightest food for vanity that I know of." ‡ "I am just come from the House at eight o'clock at night, and therefore you'll excuse me if I write the shorter. The debate turned on this, whether the address to the King should contain an approbation of the stroke given Spain, or that part be left to a further and more mature consideration, before the House engaged their advice in it. The immediate approbation was carried by 59 against 45. I was of the losing side." § "I am mighty full of business from morning

* 24th June, 1718.

† 29th June, 1718.

‡ 4th July, 1718. This refers to Lechmere, then Attorney General, who then took good advice; but was afterwards, in May 1720, silly enough to retire on a peerage.

§ 11th Nov. 1718. This was the first day of the session, and the debate was on the address. According to the Parliamentary History (vii. 361.), the division was 83 to 50; but, I presume, this included proxies. Earl Cowper himself spoke, although he does not mention this to his wife; but Lord Stanhope's, on the ministerial side, is the only speech in the debate of which a fragment is preserved.

That I may not break the series of his letters to his wife, I will here copy a

to night, and sufficiently weary before that comes. It is cruelty in you to tantalize a poor country-man with the life of state and pleasure you describe. I could be content as I am, if I did not hear of such fine doings."* "Since we neither beat our servants nor fine them, the only way to govern them is to make them so content with their places, that they shall fear turning away. John's drunkenness seems a tertian, having one sober day between two

letter from him to the Princess of Wales, and another to the Prince, which are worth preserving, to show the terms on which he lived with them:

"Madam,

"I do myself the honour to write to your Royal Highness for my poor wife, who is not able to do it for herself, being taken with a violent diarrhœa on Friday morning last, which, though yesterday, and thus far of this day, it hath in some degree abated, has rendered her so very weak, that 'tis impossible for her to stir from the place she is in without the greatest hazard of her life. I am far from thinking her safe with all the care she can take. Her real and earnest desire and hope to wait on your Royal Highness, have caused her not to consent to my writing this true excuse till the last moment allowed, which has also hindered her from trying to get another lady to wait for her, so that she has nothing to rely on but your goodness: of which she has had, on former occasions, so great proofs, as it is impossible we should not both ever acknowledge with the utmost gratitude.

"I am, with perfect fidelity and devotion,
"Madam,
"Your most dutiful and most obedient Servant,
"19th July, 1719. "Cowper.

"My wife desires her most humble duty may be presented to your R. H.; and we beg our most humble duty may be presented to his R. H."

"Sir,

"I was concernd that y[r] messenger had y[e] trouble to come so far as this place, w[ch] I hop'd was prevented by my ordering y[t] y[r] R. H.'s l[re] should be receiv'd at my house in town, and sent by my packet of this night to me; but I was coverd with confusion when I found in it y[e] goodness and most oblidging maner w[th] w[ch] you had granted my request, least I should not live to deserve it. I assure you, S[r], y[t] what is left me of life shall be principally applyd to that end.

"I am, w[th] perfect constancy and truth,
"Your much oblidged, and most dutyfull and most obed[t] servant,
"18th July, 1720." "Cowper.

* 2d June, 1720. I am much afraid that the Ex-chancellor, notwithstanding his affected pleasantry, was really at this moment in his retreat sighing for the woolsack with all the anxieties and labours which induced him to resign it. Perhaps I may say of most of my Ex-chancellors:

—— "Quam vellent æthere in alto
Nunc . . . . duros perferre labores!
Fas obstat, tristique palus inamabilis unda
Alligat, et novies Styx interfusa coercet."

I remember old Judge Heath observing to me soon after I was called to the bar, "I have known many Ex-chancellors in my time, but I have never known a contented one yet."

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drunken ones, except that on Friday it proved quotidian."* "The country is excessively pleasant, but I am sensible while it pleases it dulls me, and in these few days I have contracted a great degree of indolence, and an aversion to all cares but the little ones of this place. Would to God our leaders would need no observation, or that they would effectually take it up. I am far from thinking it pleasant, or indeed wise, to set up for a Reformer; but somebody must endeavour to prevent things from running to an excess of ill."†

The following is the only remaining letter in my possession of Lord Cowper to the Countess, and it will be read with great interest, as it is the last he ever sent to her, and was written exactly one week before he died. She was then at Colegreen, he being detained by some private business in London. Having despatched this, he hoped to join her immediately. The handwriting is considerably altered, indicating infirmity or nervousness. I am not able to offer any further explanation of the letter or its allusions.

The last letter he ever wrote.

"George Street, Thursd. 3 Oct.

"My Drst Life,

"I recd your lre here last night, dated on Tuesday last: it is very hard a man and wife cannot correspond wth innocent & proper freedom, without its beeing a diversion to a third person. To-day I hope to finish wth ye D. of K., who is gone somewhatt ill to Rest by the Drs advice; but then I have 3000 dead to dispose of, wch 'tis worth staying one day longer for; so I cant be wth you till Sat. next. I am,

"Dst M.,

"Yours wth perfect affection,

"C."

His death.

He reached Colegreen on Saturday as he expected, but, being exposed to severe cold on his journey, he was taken violently ill immediately after his arrival at home, and his disease soon assumed a very alarming aspect. He received all the attentions which the fondest affection could bestow

* 5th June, 1720. † 13th April, 1722.

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from his wife and from his children. When informed of his danger, he received the intelligence with firmness, and with becoming resignation and composure he prepared to meet his end. He expired on Thursday, the 10th of October, 1723, in the sixtieth year of his age.

Oct. 19. 1723. His burial.

He was buried in the parish church of Hertingfordbury, in Hertfordshire, the resting-place of his immediate ancestors and of many of his descendants. The sexton shows a splendid marble monument as his, but, in reality, it was erected in honour of his brother Spencer, the Judge, and there is not even a tablet to indicate the spot where his dust reposes.

His merits.

Brass and marble may be reserved for those who, without their aid, would soon sink from the memory of mankind. Lord Chancellor Cowper achieved for himself a permanent place in the public annals of his country. He retains a high reputation as a lawyer, as a statesman, and as an orator. He was a consistent and most honourable politician, fully understanding, and ever acting upon, the true principles of the English constitution. He must likewise be considered, upon the whole, a friend to religious liberty, although he had not, like Lord Stanhope, so far outrun the prejudices of the age as to perceive that, for the sake of true piety, and to rescue the established Church from unmerited odium, civil privileges ought not to depend upon any religious test.

Truth of the charge of bigamy against him examined.

It is now my duty deliberately to examine the grave imputation cast upon his moral character. When he was rising to eminence as the leader of the Whigs in the House of Commons, the rumour to which I have alluded originated, that he had married a second wife while the first was still alive, and this was industriously circulated during his first chancellorship. On the change of government (as

Swift.

we have seen) it was eagerly seized on by Swift, become Tory, who, in his contrast between the then late and present ministers, did not scruple to charge the Ex-chancellor Cowper with having not only practised but deliberately defended polygamy. Then came Swift's associate, the infamous Mrs. Manley, who, in the NEW ATALANTIS, under the names of "HERNANDO and LOUISA," gave a most detailed and in-

flammatory account of the guilty loves of Lord Cowper and a young lady, supposed to have been his ward,—with a representation that he had persuaded her of the lawfulness of a plurality of wives — and a broad assertion that his brother Spencer, disguised as a French refugee priest, performed the ceremony of marriage between them. The charge was so often repeated that it gained credit, and the nickname of "Will Bigamy," by which the Tories designated the Keeper of Queen Anne's conscience, afterwards stuck to him. When Voltaire visited England, to inspect our customs, he found the story very rife. Believing, or affecting to believe it, — when he published his "PHILOSOPHICAL DICTIONARY," and under the word "Femme," discussed the subject of *Polygamy*, in the section entitled "De la Polygamie permise par quelques Papes et par quelques Reformateurs," he boldly introduced this sentence: "Il est public en Angleterre, et on voudroit le nier en vain, que le Chancellier COWPER épousa deux femmes, qui vécurent ensemble dans sa maison avec une concorde singulière qui fit honneur à tous trois. Plusieurs curieux ont encore le petit livre que ce Chancellier composa en faveur de la Polygamie." *

Mrs. Manley.

Voltaire.

After an impartial investigation, I am bound to say that the charge rests on no authority, and is contradicted by strong circumstantial evidence. I suppose Voltaire's testimony will have as little weight with respect to the fact of the *polygamy*, as to the "petit livre" in favour of the practice.

The jumble of obscenity and falsehood, entitled the NEW ATALANTIS, was treated with scorn by all sensible men when it appeared, and can now mislead no one acquainted with its infamy. Swift, as a slanderer of private character, is to be placed in the same category with the authoress of it. Indeed, he himself expresses great respect and sympathy for her, and

* I have heard it asserted, that Voltaire declares elsewhere, that "according to the laws and usages of England, the Lord Chancellor is privileged by his office to have as many wives as he pleases, whence one of his titles is that of *Lord Keeper*." I should not have been at all surprised to have seen such a statement in the "Lettres sur l'Angleterre," but I have not been able to meet with it there, or in any of the other writings of the Philosopher of Ferney, which I have ventured to consult.

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Panegyric on Mrs. Manley, by Swift.

shows that there can be no injustice in classing them together. "Poor Mrs. Manley," he writes to Stella, "is very ill; the printer tells me he is afraid she cannot live long. I am heartily sorry for her; she has very generous principles for one of her sort*, and a great deal of good sense and invention."† General rumour can go for nothing where such arts are used to poison the public mind. The charge is never glanced at in parliamentary conflict, although the vices of the Duke of Wharton frequently are; and it is not mentioned in any publication with the slightest claim to respectability.

Refutation of the calumny.

On the other hand, I have had access to documents in which, had the story been true, there must have been some trace of it. Lord Cowper actually was married to two wives — but — successively — not simultaneously. I have seen his correspondence with both these ladies from before the time when he wedded the first, till he left the second a widow to lament his loss, and I can find nothing in it but sentiments of warm, mutual, and undivided affection. He seems to have been a true and a tender husband — of which I may give a touching proof by an extract from the diary of the second Lady Cowper: —

"April 7th, 1716. After dinner we went to Sir Godfrey Knellers to see a picture of my Lord which he is drawing, and is the best that was ever done for him; it is for my dressing room, *and in the same posture that he watched me so many weeks in my great illness.*"

Upon the whole, I think we may safely set down the charge that Lord Chancellor Cowper advocated and practised polygamy to party malignity, which in his time raged among

* Her most creditable position was as mistress to Swift's old friend, Alderman Barber. The Dean was well acquainted with her history from the moment of her birth, as we know by his lines to "CORINNA." Most of these are unfit to be transcribed, but I may copy the stanza celebrating her precocity in slander:

"Her talent she display'd betimes,
For in twice twelve revolving moons
She seem'd to laugh and squall in rhymes,
And all her gestures were lampoons."

What she did at six and at twelve must not be told.

† Journal to Stella, 1712. 26th January.

men and women to a degree of which we can form no notion, without studying the libellous publications which then disgraced the press.*

Testimonies in favour of Lord Cowper, by A. Philips.

Having paid such attention to Lord Cowper's detractors, it will be bare justice to mention some of the eulogies pronounced upon him by contemporary writers in verse and in prose. Ambrose Philips, secretary to a Lord Chancellor as well as a poet, and therefore competent to judge of his merit, not only praises his disinterestedness in sacrificing "New Years' Gifts," but in the Pindaric ode to his memory, ascribes to him every public and private virtue. A few extracts from it may please.

"Wake the British harp again
To a sad melodious strain.

* * *

Here we come, and hence we go,
Shadows passing to and fro,
Seen awhile, forgotten soon,
But thou to fair distinction born,
Thou, Cowper, beamy in the morn
Of life, still bright'ning to the pitch of noon.
Scarce verging to the steep decline
Hence summon'd, while thy virtues radiant shine
Shall be remember'd with a fond applause,
So long as Britons own the same indulgent laws.

* *

Hear him speaking, and you hear
Reason, tuneful to the ear!
Lips with thymy language sweet,

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* The fable of the "Treatise" is evidently taken from the panegyric on a "plurality of wives," which Mrs. Manley puts into the mouth of Lord Cowper, in a speech supposed to be addressed by Hernando to Louisa. Much of it is too gross to be read; but an innocent specimen of it may be given. "The law of nature, as well as the custom of many nations, and most religions, declare for polygamy. The ancient Hebrews indulged in plurality of wives and unlimited use of concubinage. The Turks, and all the people in the world but the Europeans, still preserve the privilege. It is to be owned, their manner in all things is less adulterated than ours; their veracity, morality, and habit of living, less corrupted. In pretending to reform their abuses, Europe has only refined their vices." Some of the scenes between Hernando and Louisa, which Swift thought displayed Mrs. Manley's "good sense and invention," are most flagitiously indecent.

A similar story was told (and perhaps with as little foundation) of another eminent lawyer who then flourished. Instead of the two wives agreeing so well together in the Voltaire fashion, it was said that they did not know of each other's existence; and that he passed a part of every night in the house with each of them, telling the one whom he visited first that he was obliged to leave her to go very early in the morning to his chambers in the Temple; and the other, whom he then visited, that he was obliged to remain at chambers till so late an hour.

CHAP. CXVII.

Distilling on the hearer's mind
The balm of wisdom, speech refin'd,
Celestial gifts! Oh, when the nobles meet
When next, thou sea-surrounded land,
Thy nobles meet at Brunswick's high command,
In vain they shall the charmer's voice desire,
In vain those lips of eloquence require,
That mild conviction, which the soul assails,
By soft alarms and with a gentle force prevails!" *

Pope.

In Pope's imitation of Horace, where he introduces his two brother Serjeants complimenting each other, he makes Cowper their model of grace:

"'Twas, 'Sir, your wit,' and 'Sir, your eloquence.'
'*Yours, Cowper's manner;*' and 'yours, Talbot's sense.'" †

Sir C. Hanbury Williams.

He is likewise celebrated in the poem ascribed to Sir Charles Hanbury Williams, in which offerings are supposed to be made to Sir Hans Sloane to enrich his Museum:

"Some strains of eloquence, which hung
In ancient times on Tully's tongue,
But which conceal'd, and lost had lain,
Till Cowper found them out again."

Steele.

"Who," says Steele in describing the characters of the Whig ministers, "is not pleased to see a person in the highest station in the law, who was the most eminent in his profession, and the most accomplished orator at the bar?" ‡ The same writer, in his Dedication of the 3rd volume of the Tatler to Lord Cowper, thus speaks of him: "It is our common good that your admirable eloquence can now no longer be employed but in the expression of your own sentiments and judgment. The skilful pleader is now for ever changed into the just judge; which latter character your Lordship exerts with so prevailing an impartiality, that you win the approbation even of those who dissent from you, and you always obtain favour because you are never moved by it. The graceful manner, the apt gesture, and the assumed concern, are impotent helps to persuasion, in comparison of the honest countenance of him who utters what he really means. From

* I wish that Ambrose had tried to celebrate him in a "Pastoral," instead of an "Ode."

† "Frater erat Romæ consulti rhetor; ut alter
Alterius sermone meros audiret honores."

‡ Tatler, 7th Feb. 1710.

whence it is that all the beauties which others attain with labour, are in your Lordship but the natural effects of the heart that dictates."

Paper in "Spectator" in his praise.

While he was excluded from office in the latter end of the reign of Queen Anne, and never likely again to have the distribution of public patronage, Hughes devoted to his praise an entire paper of the Spectator, with this motto from Tibullus: —

> —— "Quodcunque meæ poterunt audere Camœnæ
> Seu tibi par poterunt; seu quod spes abnuit, ultrà;
> Sive minus; certeque canent minus: omne vovemus
> Hoc tibi: ne tanto careat mihi nomine charta." *

I extract the passages which I consider the most characteristic. — "In his private domestic employments he is no less glorious than in his public; for it is in reality a more difficult task to be conspicuous in a sedentary inactive life than in one spent in hurry and business. There are many who are acceptable to some particular persons, whilst the rest of mankind look upon them with coldness and indifference; but he is the first whose entire good fortune it is ever to please and to be pleased, wherever he comes to be admired, and wherever he is absent to be lamented. His merit fares like the pictures of Raphael, which are either seen with admiration by all, or at least no one dare own he has no taste for a composition which has received so universal an applause. It is below him to catch the sight with any care of dress; his outward garb is but the emblem of his mind. He is still the principal figure in the room. He first engages your eye as if there were some point of light which shone stronger upon him than on any other person. Nothing can equal the pleasure that is taken in hearing him speak, but the satisfaction one receives in the civility and attention he pays to the discourse of others. His looks are a silent commendation of what is good and praiseworthy, and a secret reproof to what is licentious and extravagant. He knows how to appear free and open without danger of intrusion, and to be cautious without seeming reserved." †

* Tibull. 1 El. iv. 24.
† Spectator, No. 467. vol. vi. 386.

CHAP. CXVII.

His character in "True Briton" and "Historical Register."

The following character of him appeared in the "True Briton," a few days after his death, and was afterwards transferred into the "Historical Register," for the year 1723. "He was the most accomplished lawyer, civilian, and statesman, that England bore for many ages past; being consummate in the knowledge not only of the common and statute law, and of the constitution of his country, but also of the law of nations, imperial institutes and canon law; and he had received from nature, and cultivated by polite literature, excellent endowments, that gave a lustre to his great learning: a bright, quick, penetrating genius; an exact and sound judgment; a fruitful yet unluxuriant and agreeable imagination; a manly and flowing eloquence; a clear, sonorous voice; a gracious aspect; an easy address; in a word, all that's necessary to form a complete orator."

By Duke Wharton.

The Duke Wharton, writing after Lord Cowper's death, says, "He came not to the Seals without a great deal of prejudice from the Tory party in general, among whom I believe there was not one but maligned him. But how long did this scene continue? He had scarcely presided in that high station one year, before the scales became even with the universal applause and approbation of both parties. There was not the least mark of party rage, rashness, rigour, or impatience to be seen or traced throughout all his conduct in this critical branch of his high office; for which he showed such a masterly genius and uncommon abilities, that made easy to him the great task of dispensing justice, which, like the sun, he dispensed with equal lustre on all without regard to quality or distinction."

Compliment to his eloquence by Lord Chesterfield.

The most valuable testimony to his powers of speaking, although mixed with a little sarcasm, is from Lord Chesterfield: "The nature of our constitution makes eloquence more useful and more necessary in this country than in any other in Europe. A certain degree of good sense and knowledge is requisite for that as well as for every thing else; but beyond that, the purity of diction, the elegancy of style, the harmony of periods, a pleasing elocution, and a graceful action, are the things which a public speaker should attend to the most; because his audience does,—and understands

them the best, — or rather, indeed, understands little else. The late Lord Chancellor Cowper's strength as an orator lay by no means in his reasonings, for very often he hazarded very weak ones. But such was the purity and elegancy of his style, such the propriety and charms of his elocution, and such the gracefulness of his action, that he never spoke without universal applause. The ears and the eyes gave him up the hearts and the understandings of the audience." *

Tribute to him in New Atalantis.

After all, perhaps, the very high opinion entertained of his talents in his own time may best be understood by the extorted praise, mixed with gratuitous abuse of him, to be found in the NEW ATALANTIS itself: "All the great success he has met with is due to the brightness of his own genius; he owed much more to his natural than acquired parts. His memory was good, so was his luck: to those were joined a great deal of wit; a volubility of tongue; ready sentiments, and a most plausible address; religion in pretence, none in reality. He held it lawful for a man to obtain, by any methods, either pleasure or riches; he was violent in the pursuit of both; quitting his interest for nothing but pleasure, and his pleasure for nothing but interest." †

Anecdote of his ordering a chair for Richard Cromwell.

I am sorry that I am not able to record any of his happy sayings, and that so few genuine personal anecdotes of him are preserved; but I have great pleasure in doing justice to his good feeling and good taste on an occasion which tested both. After the Revolution, the tone was to treat all that had happened during the time of the Commonwealth with equal horror as when the sons of the Blessed Martyr were misgoverning the kingdom. But it happened that Richard Cromwell, in his old age, had to appear in Westminster Hall before Lord Cowper when Chancellor, and his Lordship ordered him a chair in respect of the high station he had once held. This was different treatment from the Ex-protector's rude ejection from the House of Lords by the door-keepers as one of the mob, when he exclaimed: "The last time I was in this place I sat upon the throne."

From his practice at the bar, and the fair emoluments of his offices, Lord Cowper honourably raised a large fortune.

* Lord Chesterfield's Letters, ccv. † Vol. i. 195.

CHAP. CXVII.

He purchased the manor of Hertingfordbury, and built upon it his country house, Colegreen, which afterwards made way for the more stately Panshanger, the residence of his descendants.* He collected a fine gallery of paintings, still preserved in the family, among which the most valued are portraits of himself, by Kneller, strikingly representing the very handsome and intelligent countenance, admired by his contemporaries.

Lord Cowper's descendants.

Lord Cowper by his second wife left both sons and daughters, and his family, illustrated by the great poet of his blood and name, still more than by the title of Prince of the Roman Empire, conferred on his grandson, is now one of the most distinguished in the Peerage of England.†

Recollection of the late Earl Cowper.

I may perhaps be pardoned if I conclude this memoir with a valueless, but sincere tribute of admiration and gratitude, to Peter Leopold, the late Earl. He had too much delicacy of sentiment to take a leading part in public life, but to the most exquisitely pleasing manners he joined a manly understanding, and a playful wit. From him I received kind and encouraging notice, when I was poor and obscure; and his benevolent and exhilarating smile is one of the most delightful images in my memory of pleasures to return no more.

* While in office, besides his town house in Lincoln's Inn Fields, or Great George Street,—that he might be near the Court, he had a lodging at Kensington, then considered as far from London as Windsor now is. To this Lady Cowper refers in her Journal in a manner which strikingly shows the state of the police 130 years ago:

"October, 1715. I was at Kensington, where I intended to stay as long as the camp was in Hyde Park, the roads being so secure by it that we might come from London at any time of the night without danger, which I did very often."— This encampment was previous to the march of the army to put down the rebellion in Scotland.

† Grandeur of the Law, p. 52.

# APPENDIX.

## AN IMPARTIAL HISTORY OF PARTIES.

"May it please your Majesty,

It being probable that many of those who have had the honour of serving you as Lords Justices during your Majesty's absence, will think themselves obliged, on your Majesty's arrival in your kingdom, severally to offer their thoughts, concerning the first settlement of your government, as that upon which not only the security, but also the tranquillity and comfort of your Majesty's whole reign, will entirely depend, I humbly beg leave (not being sufficiently master of the French tongue to explain myself fully, by speaking on a matter of so great consequence) to offer to your Majesty's judgment, in this manner, the best information I can, together with a few thoughts on that important subject; which is done with an entire resignation to your wisdom, and a most cordial disinterested zeal for your Majesty's service.

Nothing can sooner conduce to your Majesty's entering on right measures, at this juncture, than the giving a true idea of the parties into which, to our great misfortune, your people are divided. When that is once done, none is so well able from thence to make proper inferences, and form the most useful rules of government, as your Majesty; whose wisdom, experience, application, and success in that particular, are known and admired by all Europe.

That part of your people which consists of Papists and nonjurors, who manifest their disaffection to your Majesty's government by denying to give those assurances which the laws require, are, in England, but few in proportion to the rest of your Majesty's subjects; but I choose to mention these first, because all that need be suggested concerning them is in a very narrow compass. There are several penal laws in force contrived to curb and restrain them as there is occasion; and accordingly, those laws have been used to be put in execution with more or less rigour, as they who are obnoxious to them have behaved themselves with more or less duty and submission to the government, and sometimes with respect to the usage the Protestants meet with in the countries of Roman Catholic princes or states; and there is no question but your Majesty will be advised to deal with them in the same manner.

The residue of your Majesty's subjects, who take the oaths, and give all the assurances the laws require, are, notwithstanding, divided into two parties with respect to the government.

These parties began to form themselves and give names to each other about the time the Bill of Exclusion was set on foot, in the reign of King Charles II., though some affect to carry their beginning so far back as the civil wars, which is part of the scandal one of them is pleased to fling upon the other, without the least ground of truth, since, to do them right, both are sincerely for the Monarchy of Great Britain and the Church of England (excepting as to the Church the Protestant Dissenters, who range themselves with those called Whigs, as the Papists do with those called Tories, almost in all state controversies whatsoever).

The Tories accuse the others of being inclined to set up a commonwealth, and the Whigs them of a design to introduce Popery, or at least to bring the Church of England nearer to that of Rome. Whereas, on one side, there are hardly ten in the whole kingdom that may be justly suspected of being for a commonwealth; and, on the other side, whenever the danger has been near and imminent, have shown themselves firm against Popery; and they among them who are projecting a union with the Gallican Church, are either Non-

jurors or as few in number and as inconsiderable as the commonwealth men have been said to be on the other side. So that, laying by the reproaches which the parties unjustly make use of one against the other, their real differences of any consequence are but two, which began in this manner: —

King Charles II., as was believed, by the influence of his brother, the Duke of York, had set on foot a violent prosecution against the Protestant Dissenters, to divide the Protestant interest, so that the Papists might the easier take advantages of those divisions. This was mightily exclaimed against and opposed to the utmost of their power by those who were afterwards called Whigs, and was much encouraged and promoted by the other party. And hence it was that this Act of Toleration, or at least an exception of Protestant Dissenters from the penal laws was one great point the parties at first divided upon. The other was this: —

About the year 1678, the Popish plot being discovered, turned the thoughts of such as were zealous for the security of the Protestant religion to consider the danger it would incur if a Popish successor should come to the throne, and the Duke of York being known to be a Roman Catholic, Bills of Exclusion were voted by the House of Commons in three successive parliaments to set aside the Duke of York, and limit the Crown to the next Protestant heir. One of the most forward and zealous of the members of the House of Commons in this business was Sir William Cowper (father of the Chancellor and M.P. for Hertford), whose grandfather, Sir William Cowper, had been a zealous royalist.

This Bill was promoted by members of the Church of England (there being but two or three Dissenters or thereabouts in any of those parliaments), and by such, generally speaking, who themselves or their ancestors had been royalists and taken part with King Charles I.

The court strenuously opposed it, and kept it from passing, either by getting a majority of votes against it in the House of Lords, or dissolving the parliament as soon as it was seen that it would pass the House of Commons.

This contest was also managed by a paper war; wherein they who were for excluding the Duke of York were by their adversaries in division called Whigs; and the others, who struggled to secure the crown to him, were called Tories.

The opinions the Whigs stood upon in general were, that although the monarchy was undoubtedly hereditary, and not elective, yet that for the preservation of the whole constitution, and particularly to prevent a Popish successor from succeeding to the Crown, whom they held to be incompatible with a Protestant kingdom, it was lawful for the King by Act of Parliament so to limit and bind the descent of the Crown as to incapacitate the next Popish successor or successors, and declare that it should descend and come to the next Protestant heir. And this they contended very clearly would make such Protestant heir, when in possession of the Crown, in all respects, a lawful and a rightful King.

On the other side the Tories contended, that though they could not but grant that the religion of the kingdom, and consequently the constitution, would run a great hazard under a Popish successor, yet that, by the laws of the land and the law of God, Providence only was to be trusted to in such a case, and the worst that could be expected was to be borne rather than so great and national a guilt should be incurred, as the setting aside, though by Act of Parliament, the person who was next to the Crown, in the course of descent, according to the common law, which, in this particular, they said was unalterable, and that therefore such a statute would be void, and consequently an allegiance still due to the person so excluded.

The arguments and authorities brought to support these opinions, it would be impertinent and tedious to trouble your Majesty with. It sufficeth to show what was the opinion of each of the parties at that time touching that important point, which was then agitated, and has been very lately revived on account of your Majesty's succession between the same parties in pamphlets, addresses, sermons, and laboured treatises, though not expressly in the debates or proceedings of either houses of parliament.

It is well known the Tories of that time prevailed, and the Duke of York succeeded to the Crown; but in less than four years' time, the foresight of the

Whigs was so far justified by his government that most of the great men and leaders of the Tory party joined with them, if not led the way, to desire assistance from the then Prince of Orange for the preservation of the religion, laws, and liberties of the kingdom.

The success of his glorious enterprise will ever be remembered with gratitude, and the merciful hand of God is now more visible in it than ever, when by a plain connection of causes and effects, it has made way for your Majesty's accession to the throne, and the securing it to your Royal Family, wherein we have an unusual but most delightful prospect of safety, in so many Protestant Princes in being at the same time.

But the Prince of Orange had no sooner overcome all difficulties, and rescued them from the danger they apprehended, than the parties began again to divide. The Tories relapsed into their former notions, and it was argued in both Houses of Parliament, that the course of succession was not to be interrupted for any reason whatsoever; therefore, that King James and his Family with him abroad were to be invited to return, that the Government should be continued in his name, and because they would not trust a Prince, who had in so many instances declared his design to subvert their religion and civil rights, and who had been so lately exasperated by them, they fell into an absurdity, or rather inconsistency, with their own pretences of being zealous for the prerogative, by proposing a Regency over him in power though not in style, or so to restrain his authority that there should be no fear of his invading the Religion and Laws of the Kingdom any more; choosing in that manner to alter the very nature of the monarchy, and reduce it almost to a commonwealth, rather than exclude a Papist from the throne, and entail, after King William's decease, on the next Protestant Heirs.

But the majority of the Convention Parliament then sitting being of the Whig party, and not being willing to trust to such measures, the Prince of Orange was crowned King with his Queen, and the Crown, by an Act of the 1st year of King William and Queen Mary, became entailed on the heirs of the body of that Queen, and after, on the Princess Ann of Denmark, and the heirs of her body, and after, on the heirs of the body of King William.

And not only so, but the other disputed point of a toleration for Protestant Dissenters was settled by Act of Parliament, as the Whigs always desired it should be; and an exemption of Protestant Dissenters from the penalties of all the laws which affected them, was carefully and clearly enacted: the subsequent experience of which law, in bringing so much quiet and riches to the kingdom as it has done, has convinced many of the Tories of their error in that particular.

It may now reasonably be wondered at, since the two points in dispute were thus silenced by the two mentioned laws, how the parties could keep any longer divided, and what was remaining for them to continue about? This is answered by observing, that the Tory party became very uneasy at seeing the opinions they had been so long contending for borne down by two Acts of Parliament. They could then, indeed, no longer dispute the passing those laws, but they could and did sufficiently, on all safe occasions, manifest their dislike of them and resolution to get rid of them the first fair opportunity.

So that the only change produced among the parties was this, that as the struggle before was either to procure or hinder those two important acts for the security of the Protestant interest, so now it became a contest between them, (covertly, at least,) whether what was so obtained should be preserved and continued?

'Tis true, indeed, that by much the greater part of the Tory party, seeing a necessity, either of owning the Government or quitting all hopes of employments in Church and State, besides being liable to double taxes, (as the Papists and Non jurors were,) soon addressed themselves to find out such distinction as might leave them at liberty to own the then present Government, and to take such preferments under it as they could get. The topic they generally went upon was, that in opposing or not helping the Revolution Settlement, (though some of them had appeared in arms with the Prince to enable him to settle things to their mind,) they had acquitted themselves, in their opinions, of all

guilt which they thought was contracted by those who had been busy in that work. And now that the law required them, under penalties, in case of disobedience to take certain oaths, they might as good Christians submit to the present powers and take them accordingly, intending still to own the King only as a King *de facto*, and not *de jure*; and that they might likewise for the support of order and government, till the rightful owner should find an opportunity of being restored, conscientiously take and execute any places of profit and trust in Church or State, the rather because their so doing might, in time, be a help to the setting things again, upon what they called, the right foot.

Books were wrote and sermons preached, using arguments of different sorts to support, or at least colour, these and the like notions.

On these grounds, all of that party, (except a very few,) took the oaths of allegiance, &c., to King William and Queen Mary, and many of them were admitted into places and some into those of the greatest dignity and trust. Several also into the Church, and even of those that had made difficulties of owning the Revolution Settlement, and stood out till near the last minute allowed them for it, were notwithstanding countenanced and preferred.

From this false step proceeded all the difficulties and troubles which that King met with in his whole reign.

And when he found himself beset with a war against France, commotions in Scotland, and an almost total defection of Ireland, he then perceived his mistake, and that he had occasion for another kind of service than that which flowed from a principle of submission and acquiescence only to his Government.

Accordingly, he made some alterations and put his principal affairs into the hands of them who had been zealous for bringing him to the Throne and making a Protestant Settlement, so far as was then established; and these carried him through that expensive war to the peace of Ryswick, with a zeal and application equal to their affections to his cause, at the same time effecting with success, what was thought impossible though almost necessary to be done during the war, the re-coinage of the whole silver species of money, without debasing the standard, either in weight or fineness.

'Tis true the Tories were by the credit many of them obtained, in the beginning of his reign (as before observed), so raised that though they fell very short of a majority in Parliament, while the Court favoured the other party, yet they were able by raising objections to, and clogging the easier methods proposed for raising money, not only to make the supplies come later sometimes than was convenient, but also to necessitate raising them by way of funds, or anticipation of several excises for perpetuity, or long terms of years, rightly judging that such a course would, at one time or other, load and distress the Government. Whereas, if near as many duties as are now mortgaged had been given at once, those with the Land tax would have maintained the current service of the war, and civil government in each year by the product of the same year, and consequently the nation, not weary of the war till a good peace could be had, and out of debt or near it, when the war was finished.

I was then in the House of Commons, and one of those that proposed this method of raising the supplies within the year; but it was effectually opposed by the Tory party, they drawing into their opinion, as to that particular, several well meaning gentlemen, by suggesting that so easy and commodious a way of raising money might prove dangerous to liberty.

'Tis true that on many occasions the party last named has had the dexterity to object this mistake of running the nation into so great a debt to their adversaries then in the ministry, but I can aver it with the greater certainty, they were far from electing that method, otherwise than that they had rather supply the King that way than not at all, or unseasonably late, one of which would have fallen out; if they had endeavoured to have broke through the opposition made to the raising the money any other way.

The peace of Ryswick being made, his then Majesty was prevailed on to experience once more, if he could render his affairs easy, by trying to win the Tories with the principal places of trust, which they might probably execute well enough to support the Government in time of peace.

This trial was made but did not answer expectation, for the King became

more uneasy with them when in power than before, which, together with his foreseeing the necessity of a new war, made it evident, that as he had begun to advise with his old servants in private, so they would quickly have been restored to their former power, had his Majesty lived but a little longer than he did.

It must be confessed, that the Act for the further Limitation of the Succession to the Crown passed in the 12th year of this King, while the Tories were in such credit, and had a majority in the House of Commons; it is therefore to be observed, that the true reason why such a Bill passed in such a Parliament was: That the King having, by his own inclination, and probably the advice of some of his old ministry whom he continued to hear, earnestly recommended that Bill to Parliament in his speech from the throne, the Tories, for fear of losing the King's favour, did not endeavour to reject it, but set themselves to clog it, and indeed render it absurd by some of the restrictions your Majesty is undoubtedly apprised of, and to show their contempt and aversion whenever it came on, except when it was necessary to be present in order to load it, and by calling Sir J. B. to the chair of the Committee for that Bill, who was then thought to be distracted, and was soon after confined for being so.

Thus, that Bill went through the House of Commons, and many there who had let it pass, hoped that the House of Lords, where the Whigs had yet a majority, would, by disputing at least some of those restrictions which were most absurd and impracticable, lose the Bill. But the friends to your Majesty's family were better advised; they took and passed the Bill with all its faults, and without any amendment, wisely depending, that if they secured the main, the succession, whatsoever was absurdly and unreasonably annexed to it, would, at some fitting opportunity or other, be easily laid aside. Which, their opinion, has already in a great measure proved true. One of those restrictions, which enacted that all public business should be transacted only in the Privy Council, and that every Privy Councillor should set his name to the resolutions drawn up in form, being repealed in the reign of the late Queen, and by the same act another of those restrictions, that no officer should sit in either House of Parliament after the Queen's decease, was reduced so as to extend to some few officers only, and that, as well in the Queen's time, as after the Protestant succession, should take place.

King William, having passed this Bill for the further limitation of the Crown, soon after died, leaving that invaluable legacy to his people.

Her late Majesty, upon her accession to the Crown, did not only continue to employ those of the Tory party she found in power, but added many others of the same, and set herself plainly and avowedly to govern by it; and as a natural consequence of so doing, was advised in her first speech from the Throne to reflect on the memory of her glorious predecessor (without whose hazardous and successful expedition the sceptre had certainly been in another hand), by saying very emphatically, that *her heart was entirely English;* which, however, her Majesty intended, they who persuaded her to use that expression, and every one who heard of it, understood to be an insinuation that King William's being born abroad had occasioned his not having the interest of this kingdom so entirely at his heart as he should have had, which was very far from having any foundation in truth, considering that he had ventured his life and fortunes more than once for our preservation, and had shown no greater favours to the States General than were necessary to cultivate a good understanding between the two nations for their common security.

Yet, notwithstanding this manifest resolution to uphold the Tory party and discountenance the other, the war had not been renewed and continued any long time before the Duke of Marlborough and Lord Treasurer Godolphin, then in principal credit with the Queen, discovered that they could not carry on the war with any hope of success by a set of men who, though they were willing to profit and govern under the Queen's authority, yet, had not so cordial an affection to a Government, founded on the Revolution, nor aversion to the Popish line, as to induce them to bear the odium of raising the necessary supplies.

The two mentioned ministers finding themselves under this difficulty, by the intervention of the late Duke of Montague, applied to some of the principal

lords who had been in business under the late king, and were of the Whig party, who very willingly undertook to endeavour the carrying on the Queen's business in Parliament on this very reasonable consideration, that some of the offices of principal trust, if not the greater part, should be in the hands of their friends, since experience had shown they had so little deserved to be run down and oppressed as they had been; that, on the contrary, they were the only persons who were willing and able to carry the Queen with success through that just and necessary war; and accordingly, as an earnest of sincerity, it was insisted that the Great Seal should be put into the hands of Mr. Cowper, who had steadily adhered to the Revolution interest in the House of Commons through several successive parliaments.

This alteration was soon after made, and others following in a little time of the same nature, it was seen which way the Court inclined, and thereupon in two ensuing parliaments the Whigs had a clear majority, as it will always happen whenever the Court have a mind to have it so.

I need not tell your Majesty how faithfully the Queen was served by that ministry and those parliaments, nor with what a prodigious uninterrupted course of success, nor to what a degree the credit of the nation was raised abroad and at home, — France reduced and the confederacy exalted. These things cannot but be present to your Majesty, and in the clearest light.

The same ministry and parliaments showed also their affection and unwearied zeal to the interest of your Majesty's house, by contriving and passing the act for the further securing the succession to the Crown in the Protestant line; which put it into such a method as was not to be resisted but by open force of arms and a public declaration for the Pretender, and made it high treason for any whose duty it was to be concerned in the proclamation to be so much as negligent in proclaiming the next Protestant successor.

Under the same faithful and happy management passed the acts in England and Scotland for the union of the two kingdoms (the Tories vehemently opposing it), which the Queen always esteemed to be the chief happiness and glory of her reign, as having been often before attempted, but still in vain; and indeed, when the Tories were before commissionated to that end, they treated it as a jest or impossibility, by absenting from all meetings appointed, and so letting it drop; although nothing is more clear than that, among many other self-evident advantages, the settlement of the Crown in your Majesty's house had probably never been obtained in that kingdom by any other means: the evil consequences of which disunion, had it happened, are but too evident to enlarge upon.

I dare not touch upon the particular causes which drew on the disgrace and change of that ministry, nor will venture to say whether it was occasioned at first by any greater design than to change the she-favourite, which unavoidably drew on more, and those still further alterations; it being not my purpose so much to follow the springs and causes of the variations of the Court measures in respect to the parties, as to show your Majesty how they severally behaved themselves, when they got the ascendant in their turns, as to the Protestant succession, the good of the state, and the common cause of Europe.

Your Majesty was so much concerned to attend to our affairs since this last alteration, and they are so fresh in memory, that I need not be particular as to what has passed. It is enough to assert, as I think it may be done with clear truth, that immediately ensued a manifest attempt, by addresses and other occasions encouraged by the Court, to sap the very foundations or principles on which the acts for securing the Protestant succession was built, by decrying all right to the Crown but what was purely hereditary and in the course of descent, according to the common law; that the Papists and Nonjurors were so far encouraged as to grow remarkable for their insolence; that a peace was in effect concluded with France in a clandestine manner, without the privity of the principal confederates, and little or no consideration had of their interests; that this neglect of them was justified by the ministry in public, by saying that the interest of Great Britain was principally aimed at in this peace (though time and experience have shown even that pretence to be untrue); that our trade is almost oppressed in all its branches, and had been entirely ruined if the Bill for confirming the French treaty of commerce had not been successfully opposed;

that the credit of the nation at home was sunk as to the public funds, and abroad as to all our good offices or menaces, which were equally despised; that our late confederates, except the king of S——, were all more or less disgusted, and distrusted our conduct in every thing, upon the justest grounds; in short, that the power of France, which had been so happily reduced, has been restored to such a degree as to become again formidable to Europe, and consequently, that the fruits of so many glorious victories as the allies had obtained were in a manner deserted and given up.

The hopes of the Pretender rose in proportion as the power of France increased; and this consequence was so natural, that one cannot avoid suspecting all this favour could not be then showed to France without a design of assisting the Pretender by that means. However it was meant, sure it is, nothing could more weaken the Protestant succession than the promoting the interest of France; and yet that was done, not by any accident, inadvertence, or want of conduct, but by a continued series of contrivances, a zealous application, and an unwearied industry.

But after all this mischief the ministry had done, they still persisted to the end in declaring they had promoted and cultivated a good understanding between her late Majesty and your illustrious house. The appearances of things, as far as could be discerned by those who were out of business, seemed quite otherwise. This is a subject unfit, as well as unnecessary, to be further enquired into, since your Majesty must know to a certainty whether their pretences were any better founded in that particular than they were in most other things; although perhaps your Majesty may receive a yet further satisfaction on this head by looking upon the instructions and letters given and sent to the Earl of Clarendon.

If this short deduction or history of the two parties should give your Majesty any clearer notion of them than you had before, I shall then be so fortunate as not to have trespassed on your patience in vain; since nothing can contribute more to the extinguishing them at length, and making a right use of them in the mean time, than a knowledge of their principles and practices.

Your Majesty may be told, and it has been often said, that the only difference is about the places; but this is either a superficial judgment, or a desire to hinder the true causes from being discerned. For if that was true, then the struggle would only be between individuals, and not between two set parties of men, which can only be kept up by some diversity of opinion upon fundamentals, at least points of consequence; and experience shows that many who have no design on preferment either for themselves or friends, but live retired on their estates, are yet as hot or hotter than any in these distinctions: and therefore I take those before stated to be the true causes which divide them, and which I beg leave to recapitulate in a few words,—that as the Whigs always contended for the toleration of the Protestant Dissenters and exclusion of the Popish line from the Crown to be established by law, the Tories did always as earnestly and publicly oppose them till they were enacted. The former are rejoiced at their success in these great points, the latter more or less discontented to see their principles discountenanced, and those of their adversaries succeed. Both, therefore, keep and improve their strength as much as they can—the one to defend their acquisitions, the other to retake them and get rid of both the laws as soon as they safely can. Not that I would have it believed that many of the Tories are not perfectly against restoring the Pretender, by force at least, or that some few of them did not make it appear, by their actions the last year, they would not have concurred to the bringing him in even in a parliamentary way; but the true reason was, they believed their religion and liberties could not be secured if they should; and their consciences not accusing them of having done any thing towards the Protestant settlement, they were well contented to enjoy the security arising from the act of others, which, though very useful, had something of unjust in it.

I have sat continually in one or other House of Parliament now about twenty-four years, and observed with as much deligence and indifference as I could, the inclinations and motions of both parties, and I will venture to assure your Majesty as what I am very certain of, that the Whigs would venture all to support the Protestant succession in your Majesty's family; on the other hand, that

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many of the Tories would rejoice to see Pretender restored, as they call it, even by a French power, much more if by any safer means; that the best of them would hazard nothing to keep him out, though probably do nothing hazardous to bring him in; but that if ever he should declare himself a Protestant, with proper circumstances to make his conversion probable (as after the death of the French King and his mother, it is not unlikely he may do), they would greedily swallow the cheat, and endeavour by all possible means to put in practice again their old notions of divine, hereditary, and indefeazible right, by a restoration of the person in whom by their opinion that right is lodged.

And if any other of the Popish line that are next after the Pretender should, after his decease, play the same part, your Majesty will find the party last mentioned very troublesome, if not dangerous; unless by prudent measures under your Majesty's Government, they shall be brought really and from their hearts, as well as in an outward compliance, to part with those notions which are so inconsistent with a Government founded on the Revolution.

I beg leave further to observe, that when lately some of the heads of the Tory party made it known, both by their words and actions, and I don't doubt sincerely, that they did not intend to concur in the repeal of the Acts limiting the succession of the Crown to your Majesty's house, much less to bring in the Pretender with the assistance of France, (which was a very seasonable service, and your Majesty has already shown yourself sensible of it), they could bring very few if any of their party after them into the same honest measures; but, on the contrary, as these leaders above mentioned appeared more zealous for your Majesty's house, so in proportion they visibly lost the affections of their party, and were themselves so sensible of it, that they were forced to bring in the Bill against Schism, only to regain the credit they had lost with their old friends.

It is an old scandal now almost worn out, thrown out by their adversaries on the Whigs, that they are against the prerogative of the crown, which I should not have thought worth mentioning, but that 'tis generally believed to have made some impression on King William in the beginning of his reign, to the irrecoverable detriment of his affairs; but he afterwards found that the Tories, not liking the hand which held the prerogative, were more inclined to straighten it, and the Whigs for the contrary reason to support it. And this false suggestion will certainly have the less weight with your Majesty, when you shall be informed, as the truth is, that the only ground for it was, the Whigs being so zealous for setting aside the Popish line in favour of the Protestant, which the Tories thought an high violation of the rights of Monarchy, and of what they erroneously called the prerogative of the Crown, the descent of which they held to be unalterable by any power on earth, and thence took the liberty of branding all of a contrary opinion as Anti-monarchical, or enemies to the prerogative. But in all other respects the Whigs are as zealous to support the prerogative as the Tories can be, and rather more they are under a government founded on the Revolution.

Having thus stated to your Majesty the practices and dispositions of the parties, I shall only add, that 'tis not to be doubted but your Majesty's known goodness and experienced wisdom will necessarily incline you to such moderate counsels as will render you King of all your divided people. But I humbly conceive it not possible so to distribute your royal favours, but that one or other of the parties will appear to have a superior degree of trust reposed in them: and if such a perfect equality was possible to be observed, perhaps it would follow that an equal degree of power, tending at the same time different ways, would render the operations of the government slow and heavy, if not altogether impracticable.

It remains therefore, in my humble opinion, for your Majesty to determine which of these shall have the chief share in your Majesty's confidence, as most likely to support your title to the Crown with the greatest zeal and most untainted affection to it. For as to their power to do it, give me leave to assure your Majesty, on repeated experience, that the parties are so near an equality, and the generality of the world so much in love with the advantages a King of Great Britain has to bestow, without the least exceeding the bounds of

law, that 'tis wholly in your Majesty's power, by showing your favour in due time (before the elections) to one or other of them, to give which of them you please a clear majority in all succeeding parliaments.

It is needless to suggest to your Majesty, but, for method's sake, it ought just to be touched upon, that whichsoever party shall have the lower degree of your Majesty's trust, it ought nevertheless to be used by those in power with very great tenderness and affection while obedient to your Majesty and the laws, and as a father would a child whom he dearly loves, though he does not totally approve, and, to be more particular, should, in my humble opinion, be admitted to a fair share of such places and employments of trust, according to their several qualifications, as are during the pleasure of the Crown, and not attended with the chief dependences.

This would be very far from the usage which the last ministry of her late Majesty bestowed on those who had served the Queen so faithfully and successfully during the war, by turning them out of all places, even the lowest civil and military, very few excepted; by maintaining libellers, and often writing libels themselves against them; by using their power and majority in parliament to garble their predecessors' conduct, and, for want of better matter, to misrepresent and reflect on parts of it, which were unblameable if not commendable; by proscribing, as far as they were able, to the contempt and hatred of the people, all that did not come into their measures, and among these the majority of the House of Lords (not reckoning those which that ministry plainly brought in for their own support), in calling them the faction, and even prevailing with the Queen to brand them plainly enough with the same name, both in several answers to addresses and speeches from the Throne, and that for no other reason but their endeavouring, in a legal parliamentary method, to oblige the ministry to make something a better peace than they were about to make, to hinder the separation of the confederate army, to rescue the trade and manufactures of Great Britain from the French treaty of commerce, and to make it evident, as they did at length, that the trade of Spain was become impracticable by the Spanish treaty of commerce.

I have but one thing more humbly to represent to your Majesty, as the only, and, if I mistake not, a sure means to extinguish the being and the very name of party amongst us, that your Majesty would be pleased to use the utmost caution not to prefer any of those ecclesiastics whose known principles lead them to scruple the validity of a limitation of the right to the Crown by act of parliament. There is a sufficient number of the clergy of the Church of England, of the most learned and best livers, out of whom your Majesty may choose for all preferments that shall fall vacant, who are not the least tainted with those notions which, while they continue, will ever find matter for discontents and divisions in your Majesty's kingdoms. But when once it is discerned that, by a steady and uninterrupted administration, no man who is known to hold opinions inconsistent with the very foundation of your Majesty's government can get into any of the Crown preferments in the Church, they who find themselves troubled with these inconvenient scruples will soon apply their thoughts and studies in good earnest to satisfy themselves, and then others, of the weakness of those errors, which will afterwards, in a little time, be confined to a few melancholy Nonjurors, who are the less dangerous for being known; and when the clergy are brought to be of one mind as to your Majesty's title, all differences in opinion among the laity on that head will soon vanish. But that part of the clergy who have always violently contended against excluding the next successor, though a Papist, will never own themselves to have been in the wrong while they find they have a fair chance for the best of the Church preferments without disavowing those errors, otherwise than by taking the oaths in form.

I have nothing further to importune your Majesty with, nor that good Providence which so visibly has placed you on the throne with any thing so earnestly as my hearty prayers that your reign may be long and glorious, and that your posterity to the end of time may rule over an happy and dutiful, and, if it is not too much to ask, an unanimous people."

## CHAPTER CXVIII.

LIFE OF LORD CHANCELLOR HARCOURT FROM HIS BIRTH TILL HE RECEIVED THE GREAT SEAL.

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Honourable character of Lord Harcourt.

I NOW enter upon the Life of a Chancellor who was not only a very zealous Tory, but a Jacobite; and it gives me sincere pleasure to think that I shall be able, almost uniformly, to speak of him with respect and with kindness. He was a tolerably good lawyer, an accomplished orator, and an ardent lover of polite learning. His mind was early imbued with the doctrines of high prerogative; but he may fairly be said in very difficult times to have preserved his consistency and his character. I do not consider his efforts to restore the exiled Stuarts morally inconsistent with the engagements into which he had entered to the existing government, and although there were loud complaints against him for at last sending in his adhesion to the House of Hanover, it should be recollected that the cause of the Stuarts had then become desperate, and that, instead of betraying, he did every thing in his power to screen his old associates.

April 7. 1713. His high lineage.

Upon Lord Cowper's first resignation of the Great Seal, —after it had been a short time in the custody of the Lords Commissioners, Trevor, Tracy, and Scrope, it was delivered, with the title of Lord Keeper, to Sir SIMON HARCOURT. This individual, who had qualities to raise himself from the humblest origin, was descended from a very ancient and distinguished family. * His ancestor is said to have been a younger brother of a Saxon King, and second in command to Rollo, when the band of northern adventurers, in the year 876, invaded France, and got possession of the province to which they gave the name of Normandy. For the services of this chief there was assigned to him the signory of Harcourt, on the banks of the Seine, from which his family took their name. Here they were seated in the middle of the

* Coll. Peer. iv. 428.; Noble, ii. 14.

eleventh century — when a younger son of the then chief accompanied Duke William in his memorable expedition to claim the crown of England, fought with him at Hastings, and having many manors granted to him for his bravery, became the founder of the English Harcourts. Robert, his great-grandson, by marriage with Isabel de Camvile obtained the estate of Stanton, in the county of Oxford, which thenceforth received the name of Stanton-Harcourt, and has for a period of above seven hundred years remained the property of his descendants.* The elder branch flourished in Normandy, as a great ducal house, down to the time of the French revolution, producing many distinguished warriors and statesmen. The *cadets* in England maintained the reputation of the race for gallantry and loyalty. In the war of the Roses they sided with the house of York, as the true heirs to the throne, and one of them particularly signalising himself under the banner of Edward IV., was by him created a Knight of the Garter. When the troubles began in the reign of Charles I. they were all devoted royalists. Sir Simon, the then Lord of Stanton-Harcourt, and grandfather of the Chancellor, fell in the first conflict which took place with the troops of the Parliament in Ireland. Sir Philip, the Chancellor's father, having married the daughter of Sir William Waller, the parliamentarian general, is said to have embraced the Presbyterian religion; but he abhorred the Independents, who had gained a decided superiority, and he refused to submit to Cromwell, even after

His father.

* This Robert was sheriff of Leicester and Warwickshire in the years 1199, 1201, 1202, and the manor of Stanton-Harcourt was confirmed to him and Isabel, and their heirs, by King Stephen and King Henry II. It was held of the Crown by the following service; namely, "That the Lord of Stanton-Harcourt should find four browsers in Woodstock Parke in winter time, when the snow shall happen to fall, and tarrye, lie, and abide, be the space of two days; and so to find the said browsers, there browsing, so long as the snow doth lye; every browser to have to his lodging every night one billet of wood, the length of his ax helve, and that to carry to his lodgings upon the edge of his ax. And the King's bailiff of the demesnes, or of the hundred of Wootton, coming to give warning for the said browsers, shall blow his horn at the gate of the mannor of Stanton-Harcourt aforesaid, and then the said bailiff to have a cast of bread, a gallon of ale, and a pice of beef, of the said Lord of Stanton-Harcourt aforesaid: and the said Lord, or other for the time being, to have of custom yearly out of the said parke, one buck in sumer, and one doe in winter. And also the Lord of Stanton-Harcourt must fell, make, rear, and carry all the grasse growing in one meadow within the parke of Woodstock, called Stanton and Southly mead; and the fellers and the makers thereof have used to have of custom, of the King's Majesty's charge, six pence in money, and two gallons of ale." — *Account of Stanton-Harcourt, by George Simon Earl Harcourt*, 1808.

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resistance had ceased to offer any prospect of success. In consequence, a great part of his property was seized and confiscated. When the monarchy was at last re-established, like many other loyal men, he was doomed to the disappointment of all hopes of preferment and even of indemnity, and to struggle with penury during the rest of his days.

His birth.

His son Simon, the subject of this memoir, was born the very year of the Restoration, and was obliged to submit to some early hardships, which perhaps invigorated his character and sharpened his intellect. I have not been able to ascertain any thing of his early education, and it is probable that till he was fit for the university he remained under private tuition at home — imbibing a proper hatred of roundheads and puritans, and hearing the praises of the blessed Martyr — intermixed with some grumblings at the ingratitude of the restored monarch.

His education.

At Oxford.

When fifteen years of age, he was sent to Pembroke College, Oxford, where he was strengthened in his faith in the divine right of Kings, and the wickedness of all resistance to their authority. At the same time he occupied himself diligently in classical studies, and he acquired a taste for poetry and polite literature, which stuck by him through life.*

At the Inner Temple.

Having resided three or four years at Oxford, he was removed to the Inner Temple, and began the study of the law.† Aware that it was with great difficulty his family could defray the expence of maintaining him at the university and the inns of court, and that any patrimony to which he could look forward was exceedingly slender, he applied himself assiduously to "Finch," "The Doctor and Student," and other institutional books then fashionable, and though he was never famous for Black Letter, he made himself pretty fairly master of his profession. He at least learned where the law upon different subjects was to be found, so that, as the occasion required, he could get up an argu-

* The Registers of Oxford have been in vain searched for any entry of his Bachelor's or Master's degree, and there seems reason to think that, for some reason not explained, he left the university without graduating. In 1702, when made Solicitor General, attending the Queen and her consort on a visit to Oxford, he being then readmitted of Christ Church, was created LL.D., and in the entry of this proceeding he is merely described as "*nuper Coll. Pembrok.*"

† He had been admitted, May 17. 1676.

ment well on any question *pro re natâ*, and appear more learned than others who had laid in a larger stock of law over which they had less command. From his family connections he had access to the best society, and he kept up an intimate acquaintance with poets and dramatists. His person was handsome, and his manners were prepossessing.

Called to the bar.

He was called to the bar in Michaelmas 1676, when Jeffreys was Chief Justice of the King's Bench, and Guildford was Lord Keeper. There had been great anticipations of his success, and these were not disappointed. "He was scarce sooner admitted to plead than admired for his pleading." * Few men ever rose more speedily into general business. He had occasional fits of dissipation, and he very rapidly spent all the fees he received; but he was generally very attentive to the affairs of his clients, and at the age of thirty he was rising rapidly to the top of his profession. He now obtained his first professional dignity, which he probably valued at the time more highly than he ever did any that followed it; he was elected Recorder of Abingdon, and had to act the Judge in the presence of the villagers, among whom he gamboled when a boy.

Rapid rise.

Not blind to the errors of the reign of James II., he had viewed with great aversion what he long continued to designate "the usurpation of the Dutch Stadtholder," — but seeing the irresistible combination of churchmen and dissenters to expel the Popish King, he perceived that all opposition to the national will must then be vain and mischievous, and he therefore resolved to "bide his time."

His conduct at the Revolution.

He would have nothing to do with the Convention Parliament, although he might have had a seat in it if he had pleased; but seeing the re-action so speedily begin, — when a new Parliament was summoned he got himself returned for Abingdon, in the hope of doing something for King James, and, at all events, resolved to embarrass the new government. He took the oaths of allegiance to William and Mary upon the maxim which guided the conduct of "downwright Shippen," and many other adherents of the Stuarts who were

* Gent. Mag. vol. lxv.

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considered "honourable men," that such oaths were not binding, and that the sin of taking or breaking them lay upon those who imposed them.

He is returned to parliament.

He made his maiden speech on the 9th of April, 1690, in the debate on the bill for recognising the new sovereign, and confirming the acts of the Convention Parliament, which had sat without any royal summons. He could not directly oppose the bill, but he tried to disparage it, from the manner in which it was framed, and he boldly said, "I have ever thought the monarchy hereditary; and by this, what becomes of your entail?" — (meaning the settlement of the Crown). "I am not satisfied that the acts of the Convention of 1660 were binding till confirmed by a parliament summoned by a lawful king." *

April 26. 1690. He opposes the Abjuration Bill;

When the bill came to be considered which required an oath to abjure King James and his descendants, Harcourt, feeling that this might be very harassing to some of his friends with tender consciences, manfully and ably opposed it as unnecessary, tyrannical, and ineffectual for its object. He said, "You have already the oath of allegiance; and if that is equivocated, what security have you in an oath of abjuration? I often hear that we have a powerful enemy abroad, and that there is a necessity to unite at home. This will endanger fomenting and increasing jealousies. I will discharge my conscience, however I may be mistaken. Such an unprecedented oath will give occasion to think there is some radical defect in the government which is to be so supported by such extraordinary expedients. You will gain no ground by it; you will make enemies. I hope there will be no reflection upon me as against the government, because I am against this bill." Sir John Mainwaring, the next speaker, seems to allude to some indiscreet declaration of Harcourt in private company. "Suppose you have a member within these walls who should say, '*If you will do as I would have you, send away King William, and send back for King James.*' † The bill passed, which remaining unmodified, I am ashamed to say, still compels us to abjure upon oath any allegiance to

* 5 Parl. Hist. 582.

† 5 Parl. Hist. 596.

the descendants of King James long after these descendants have become extinct." * CHAP. CXVIII.

April 28. 1690. And the Habeas Corpus Suspension Bill;

He next stoutly resisted the suspension of the Habeas Corpus act, — which was proposed on the ground of plots against the government, and he showed how speedily and aptly Tories and Whigs could change their language as they were in opposition or in office. "As we are sent here," said he, "to preserve the liberties of England, so there is no greater security for them than this act, and I think I have acquitted my trust very ill if I give it up. You struggled many years for it: you obtained it in times which we are taught to look back upon as oppressive, and we are now to be deprived of it. Suspending it thus, on every frivolous pretence, amounts to a repeal. At this particular time, now we have an army of foreigners in our bowels (William's Dutch guards), we should rather increase our liberties than diminish them." †

A.D. 1696.

He was presently in such keen opposition, and so little afraid of flying in the face of the Court, that when the "Assassination Plot" broke out, he was one of the small minority of commoners who refused to sign the voluntary association for the defence of William's person, although Lord Chancellor Somers erased from the commission of the peace the name of all magistrates who imitated his example.

And the Bill for the attainder of Sir John Fenwick.

I do not find any further notice of his speeches in the House of Commons till his gallant opposition to the iniquitous bill for the attainder of Sir John Fenwick. ‡ He said, "This general charge of treason seems a great hardship. There is nothing by which so many have been unjustly taken off, as such vague allegations in indictments; and the grievance was justly considered so great, that in your bill lately passed for regulating trials for high treason, you have provided that the overt acts shall be specifically laid, with time, place, and cir-

* It is a reproach to all the successive administrations which have governed the country since the death of the Cardinal of York that the abjuration oath has not been repealed or new-modelled. As we are living happily under the sixth Sovereign of the House of Brunswick, and there is no longer a disputed succession, I think it would be more for the dignity of the Crown to return to the ancient practice of testifying the duty of the subject by simply taking the oath of allegiance.

† 5 P. H. 606.

‡ See ante, p. 271.

cumstances. This is a bill to deprive an individual of the benefit of a general law, which you allow to be necessary for the protection of innocence. This is called a trial, and we are said to be the judges. I know no trial for treason but what is confirmed by MAGNA CHARTA—*per judicium parium*, by a jury, which is every Englishman's birthright, and is always esteemed one of our darling privileges: but if it be a trial, it is a pretty strange one, where the person who stands upon his trial hath a chance to be hanged, but none to be saved. I cannot tell under what character to consider ourselves, whether we are judges or jurymen: I never before heard of a judge, I am sure, nor of a juryman, but he was always upon his oath: I never yet heard of a judge but had power to examine witnesses upon oath: I never heard of a judge but had power to save the innocent as well as to condemn the guilty. Have we this power? If you were satisfied of the innocence of the accused, you must remand him to Newgate to be subject to another trial, if his prosecutors so please. Again, if I am a judge in this case, ought I not to be governed by the rules of evidence which are the rules of law; and the very foundation of the bill is that by the rules of evidence and of law he cannot be lawfully convicted? It is said we have a discretion; but my Lord Chief Justice Coke says, 'a judge's discretion is *discernere per legem*;' and on another occasion, that 'a judge is to be guided by the straight line of law, and not by the crooked cord of discretion.' The practice of Westminster Hall is talked of with some disdain, as if there they only look for reason in what is the rule: but let me tell you, there the rule is laid down because it is reason—reason approved by long experience; and therefore it is a rule. To tell me the government is in danger, and that the fate of England and of Europe depends upon this bill, is certainly rather offered to amuse than to convince. Although I have no acquaintance of Sir John Fenwick, from the account I receive of him he cannot, from his capacity, be very formidable to any government. At any rate he is your prisoner, and you have the power of detaining him as long as you please in close custody. God forbid we should live under a government which cannot subsist without taking away the life of an unfortunate gen-

tleman contrary to the rules of law! You say you are of opinion he is guilty, and that is enough. If the opinion of those who condemn will justify the condemnation, let us no longer call the verdicts against Cornish, Sydney, and Russell, murders by a perversion of the rules of law in violation of the principles of justice." *

He conducts the impeachment of Lord Somers.

The only other occasion on which Harcourt is recorded as having made a great display in the House of Commons, during the reign of King William, was upon the impeachment of Lord Somers, which seems to have been entirely under his direction. He conducted it at first very skilfully. The Ex-chancellor having made his powerful speech in his own defence in the House of Commons, the Tories were in great apprehension that there might be a division soon after he had concluded, and Harcourt starting up, made a most taunting, stinging attack on the Whigs and their leader. Walpole, wary, though inexperienced, avoided the snare, and was for an immediate division. But "Cowper's indignation moved him to reply, which occasioned the prolongation of the debate, — at the end of which what had been significantly and fully urged by Lord Somers was in a great measure forgotten. But had the impetuous zeal of his friends been restrained, and his enemies been permitted to proceed without interruption as long as they thought fit, Walpole apprehended they would not have ventured to divide the House." The impeachment being carried, after a very protracted debate, by a majority of ten, it was ordered that Mr. Simon Harcourt should present it at the bar of the House of Lords in the name of the House of Commons and of all the Commons of England.

I think he is much to be censured afterwards in framing the articles that, instead of confining himself to the blank commission clandestinely sealed, for negotiating the Partition Treaty, and the clandestine ratification of that Treaty, he introduced a number of frivolous and groundless charges. I likewise think that although he knew he should bring the case before a hostile tribunal, there being a Whig majority

* 5 Parl. Hist. 1016. 1032. 1067. 1135.

† Cox's Sir R. Walpole, i. 22.; 5 Parl. Hist. 1246.

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in the Lords, and that there would probably be an acquittal, whatever evidence he might adduce, — he acted injudiciously in allowing the case to go off upon the quarrel between the two Houses, as to the manner in which the trial should be conducted. By the unprecedented demand which he made at the conference of "a joint committee to arrange the preliminaries" he put the Commons in the wrong, and gave ground for contending that he was unwilling to proceed, because he felt that no part of the charges was maintainable, and that the prosecution was instituted merely from party malevolence. Nevertheless he was higher in favour than ever with his own party; and as at this time they had a complete ascendancy in the House of Commons, and the unfortunate result of the Partition Treaties had brought a load of unpopularity on the Whigs, it was expected that he would on the first vacancy be made Attorney or Solicitor General, or be promoted to some higher office. He had contrived to remain on friendly terms, and to be trusted by both sections of the Tories, — by those who were engaged in active correspondence with St. Germaine's, and those who were willing to serve under William, they themselves having as ministers to take charge of the church and the prerogative. *

June 6. 1701.

Dec. 1701 Accession of Queen Anne.

All his hopes were dashed by the reaction in favour of the Whigs, when Louis XIV., on the death of James II., pro-

* It is clear, from Vernon's correspondence, that there was at this time a great desire to bring Harcourt into office. May 21. 1700. "Some press for Mr. Harcourt being made Solicitor General." May 25. 1700. "It is certain that my Lord Coningsby would be glad to see Mr. Harcourt, and I know not whom besides, brought into places." Jan 13. 1701. "The King has been pressed that Mr. Solicitor should be brought upon the bench, to make room for Mr. Harcourt to succeed him." Jan. 22. 1701. "We talked, likewise, about Mr. Harcourt, whom they would make Solicitor by removing Sir John Hawles to be a Judge. I desired him to consider what they would gain by such a step; that I always understood it was his opinion that the Whigs should not be made desperate; and I asked him if any one act could go further towards it than by giving the first preferment to Mr. Harcourt; and that not in a very natural way, since the Solicitor had no inclination to be removed." — Ib. 88.

Shortly before he had been exposed to great peril, having fallen among thieves (whether they were Whigs, is not stated); but he had the good luck to escape with his life, and to recover his property. The adventure is thus graphically related in the "London Post" of 1st June, 1700. — "Two days ago, Mr. Simon Harcourt, a lawyer of the Temple, coming to town in his coach, was robbed by two highwaymen on Hounslow Heath of 50*l*., his watch, and whatever they could find valuable about him; which, being perceived by a countryman on horseback, he dogged them to a distance, and they taking notice thereof,

claimed the Pretender — undertaking to restore him by a French force: — and a Whig House of Commons being returned, the King's speech was written by Lord Somers, about to be restored to the Great Seal. But there was a still more sudden change in his favour when, on the death of William III., Anne chased all the Whigs from her Court, and put herself into the hands of Marlborough and Godolphin, believing that they would ever be true to the High Church cause. Still his good fortune continued when her first House of Commons was ready to second her in putting down the Dissenters, and doing every thing that might tend to crush the Whig party for ever.

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Jan. 1702.

March, 1702.

It is believed that Harcourt might now have had the Great Seal if he had liked; but he had been very careless about money matters, and he was not rich enough to sacrifice his practice at the bar and to run the risk of speedily losing his office. He therefore preferred waiting till he might become a law officer of the Crown, — and old Sir Nathan Wright was continued in office to the great joy of the Queen and the Church, — the Ministers having the satisfaction to know that he could be removed at any time when it might be convenient to make a vacancy.

He is made Solicitor General, and afterwards Attorney General.

On the 2d of June following, Harcourt was made Solicitor General, in the room of Sir John Hawles, and received the honour of knighthood, the Queen expressing great satisfaction that she had in her service a lawyer whose principles she so much approved.* She was not unaware of his Jacobitish propensities, which in private society he was at no great pains to conceal; but she too was a great admirer of the doctrine of "divine right," if she could have reconciled it with her own title, and she secretly wished that

turned and rid up towards him; upon which, he counterfeiting the drunkard, rid forward, making antic gestures; and being come up with them, spoke as if he clipped the King's English with having drunk too much, and asked them to drink a pot, offering to treat them if they would but drink with him: whereupon they believing him to be really drunk, left him, and went forward again, and he still followed them till they came to Cue (Kew) ferry, and when they were in the boat discovered them, so that they were both seized and committed; by which means the gentleman got again all they had taken from him."

* Burnet says: "Harcourt, and several others who had during the last reign expressed the most violent and unrelenting aversion to the whole administration, were now put into good posts." — iv. 433.

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it might prevail after the single deviation in her favour during her own life. As a mark of her special good will, she invited Mr. Solicitor to attend her on a visit she immediately after made to the University of Oxford, where they rapturously received her as the daughter of James II., forgetting for the moment that she had a "brother over the water." Sir Simon, for having so strenuously advocated the orthodox doctrines of the High Church, both ecclesiastical and political, now received amidst tremendous applause the honorary degree of Doctor of Laws.

June 27. 1702.

He continued under Godolphin and Marlborough, Solicitor General five years, and Attorney General for a year and a half longer*; but he had the mortification to see the administration become gradually more Whiggish, till at last, in 1708, he resigned, with Harley and St. John. During the early part of this period he took an active part in supporting government measures in the House of Commons, though latterly he with sulkiness confined himself to the discharge of his official duties. The Bill against occasional conformity had his eager support; and when the conference upon the subject took place between the two Houses, he was the chief manager on the part of the Commons,—contending "that if a national Church be necessary, which the Lords did not venture to deny, the only effectual way to preserve it is by keeping the civil power in the hands of those whose practice and principles are conformable to it." †

Dec. 16. 1702. His conduct while a law-officer of the Crown. 1704.

A. D. 1703. Infamous prosecution of Daniel De Foe.

In the following year he conducted a prosecution, of which the High Church party have the chief disgrace, although, strange to say, it was applauded by a considerable section of bigoted dissenters. Sacheverell beginning to preach the course of sermons which at last brought him into such notoriety, had lately, with great applause, announced from the pulpit to the enlightened university of Oxford, that the priest could not be a true son of the Church who did not hang out "the bloody flag and banner of defiance" against

* He was appointed Attorney General 25th April, 1707.

† 6 Parl. Hist. 73.

all who questioned her doctrines or her discipline. This discourse being hawked about in the streets for two pence, was very generally read, and was making a very deep impression on the public mind. The celebrated Daniel De Foe, one of the greatest literary geniuses the island of Great Britain has ever produced, at this period of his checkered career, carrying on a prosperous trade, and keeping his coach, was roused by the love of civil and religious liberty, which ever burned in his bosom, and saying that "he would make an effort to stay the plague," wrote and published anonymously his celebrated tract entitled "The shortest Way with the Dissenters." It affected to personate the opinions and style of the most furious of the ultra High Churchmen, and to set forth, with perfect gravity and earnestness, the extreme of the ferocious intolerance to which their views and wishes tended. A finer specimen of serious irony is not to be found in our language, and it may be placed by the side of Swift's "Argument against the Abolition of Christianity." "'Tis in vain," said he, "to trifle in this matter. We can never enjoy a settled, uninterrupted union in this nation till the spirit of Whiggism, faction and schism is melted down like the old money. Here is the opportunity to secure the Church, and to destroy her enemies. I do not prescribe fire and faggot, but, '*Delenda est Carthago.*' They are to be rooted out of this nation if ever we will live in peace and serve God. The light foolish handling of them by fines is their glory and advantage. If the *gallows*, instead of the *compter*, and the *galleys*, instead of the *fines*, were the reward of going to a conventicle, there would not be so many sufferers. The spirit of martyrdom is over. They that will go to church to be chosen sheriffs and mayors *, will go to forty churches rather than be hanged." Such was the existing state of society, that for some time both sides were taken in. Timid non-conformists were struck with the dread of coming persecution; valorous supporters of the divine obligation of imposing episcopacy on all Christians loudly shouted applause.

* This refers to occasional conformity, which had given rise to the controversy.

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A Cambridge fellow wrote to thank his London bookseller for sending down such an excellent treatise, which was considered in the combination rooms there, next after the Holy Bible and the Church Liturgy, the most valuable book ever printed! But when the hoax was discovered, both parties were equally in a rage against the unlucky author; and when his name was discovered, there was a general cry that he should be pilloried. In this the Presbyterian fanatics joined, because they owed him a grudge for having on former occasions ventured to laugh at some of their absurdities. They pretended to say that such a pamphlet was a scurrilous irreverence to religion and authority, and they would have none of it. Nay, a puritanical colonel said, "he'd undertake to be hangman rather than the author should want a pass out of the world." Lord Nottingham, the head of the high church party, rejoiced in this opportunity to punish a man who had been a constant assailant since the beginning of William's reign, and Godolphin being unable to resist a proposal so agreeable to the Queen (although at the instigation of Harley she afterwards took the same man into favour), a reward of 50*l.* was offered for the apprehension of "Daniel De Foe, suspected of publishing a blasphemous libel." The Attorney-General was ordered to prosecute him.

It would well have become Harcourt (himself a wit) to have refused to treat as a criminal, for penning a mere *jeu d'esprit*, one who, although he had not yet laid the foundation of his immortality by writing "Robinson Crusoe," or "The History of the Plague of London," had, in his "Review," and other publications, given proof of the most lively invention, and of great mastery over the English language; but I am sorry to say that Mr. Attorney engaged in the prosecution with great zeal and animosity. Daniel surrendered himself to save his printer and bookseller, who had been cast into prison, and in July, 1703, he took his trial at the Old Bailey, being placed like a felon in the dock. Speaker Onslow (I think rather harshly) describes Harcourt as "a man very able, but without shame." On this occasion he deserved that character. He attended

in person, made a most inflamed statement of the case to the jury, and tried to stir up their religious prejudices against the defendant, insinuating that the man who could so play with sacred things could be little better than an infidel. But the legal crime charged was an attack upon the Queen's ministers, whose conduct, it was pretended, was evidently censured by this libeller, and whom he must be taken to have wished to bring into disrepute. Mr. Attorney brought forward his favourite doctrine, that "he was entitled, and in duty bound, to prosecute every man who should assert any power in the people to call their governors to account," — a doctrine sanctioned by what was laid down by the great Holt in Tutchin's case, "that no man might lawfully publish a writing reflecting on the government, or even upon the capacity or fitness of any one employed in it."

In proving *publication* there was a difficulty, which was surmounted by a stratagem (I hope and believe) without the privity of Harcourt; for though eager to obtain a conviction to please the high church party, of which he was considered the great champion, he was not, like the Riches of a former century, ready to resort to any dishonourable means to rescue the law officers of the Crown from the disgrace of failing in a state prosecution. But as De Foe afterwards declared (and there can be no doubt of the fact) he was induced to admit the publication of the alleged libel by a private assurance given him in court, "that a high influence was not indisposed to protect him,"—by which he was to understand that if he were found guilty, any punishment awarded against him would be remitted by the Queen. Short work was then made of it; for the Judge said "there could be no doubt that the pamphlet was a wicked libel," and the jury, without leaving the box, found a verdict of *guilty*. Mr. Attorney instantly prayed judgment, and the judges, who, happily for them, are forgotten, sentenced him whose name will be remembered with affection as long as our nation or language remains, "to pay a fine of 200 marks, to be imprisoned *during the Queen's pleasure*, to stand three times in the pillory, and to find sureties for his good behaviour for seven years." He returned to his cell in the firm belief that

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he was forthwith to be pardoned and liberated, but he was told next day that he must prepare to undergo his punishment. Undismayed he sat down, and composed his most felicitous poetical effusion, entitled "A Hymn to the Pillory," with a view to be revenged of his prosecutors. The following stanza is evidently aimed at the Attorney-General, whom he suspected, however unjustly, of having deceived him: —

De Foe's hymn to the pillory.

"Tell them the men that placed him here
Are scandals to the times:
*Are at a loss to find his guilt,*
*And can't commit his crimes.*"

July 29. 1703. De Foe in the pillory.

This was published, and sold in thousands, the day he stood in the pillory before the Royal Exchange; and it was in every body's mouth the two following days, when he stood in the pillory in Cheapside and at Temple Bar. The mob drank the health of De Foe, and cursed the Attorney General. The culprit was pelted with roses, and covered with garlands. "The people were expected to treat me very ill," he tells us, "but it was not so. On the contrary, they wished those who had set me there placed in my room, and expressed their affections by loud shouts and acclamations when I was taken down." There was no foundation for the report that his ears were cut off; and I believe that there had been no instance of mutilation or branding, as a punishment for libellers, since the abolition of the Star Chamber; at any rate, none since the Revolution; yet Pope, himself the most vindictive of libellers, chose to introduce this most benevolent man, as well as fine writer, into the Dunciad, coupled with a rascal who lived by lying,—in the well-known distich: —

"*Earless* on high stood unabash'd De Foe,
And *Tutchin* flagrant from the lash below."

I have been reluctantly obliged to mention this prosecution, and to censure Harcourt's share in it, but we must chiefly blame the spirit of the age in which he lived, and we should remember in mitigation, that more than a century afterwards, and in our own generation, sentence of the pillory was pro-

nounced upon Leigh Hunt, a poet admired by many, and on Lord Cochrane, admitted by all to be one of the most gallant and skilful officers who ever adorned the naval service of England, neither of whom had committed any offence deserving punishment.

The law of libel in the reign of Queen Anne. A. D. 1704.

The only other state trial in which Harcourt was engaged was that of Tutchin for publishing the "Observator,"—a trial discreditable to several of the parties concerned in it—I am sorry to say, including Chief Justice Holt, who on this occasion laid down law which, if acted upon, would be fatal to the press, and indeed to public liberty. The defendant's counsel having attempted to put an innocent construction on some parts of the alleged libel, Mr. Solicitor Harcourt thus interposes:—"But Mr. Montague says nothing of '*the prerogative the people have that the representatives are the judges of the mal-administration of their governors; that they can call them to account, and can appoint such to wear the Crown who are fittest for government,*'—he passes by all this scandalous matter."—*Montague.* "I did so, Mr. Solicitor, and I did it on purpose, because I look upon it as a matter not proper for you and me to talk about as advocates in this place. I think the rights of the prince and the power of the people too high topics for me to meddle with."—*Northey, A. G.* "I am surprised to hear it justified here by a counsel that the people have power to call their governors to account. I will always prosecute any man that shall assert such doctrines."*—*Holt, C. J.* (to the jury). "This is a very strange doctrine to say, it is not a libel—reflecting on the government—endeavouring to possess the people that the government is mal-administered by corrupt persons. To say that corrupt persons are appointed to administer affairs is certainly a reflection on the government. If writers should not be called to account for possessing the people with an ill opinion of the government, no government can subsist. Now you are to consider whether those words I have read to you do not tend to beget an ill opinion of the administration of the government? To tell us that 'those who are employed

* 14 St. Tr. 1122.

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know nothing of the matter, and those who do know are not employed,—that men are not adapted to offices but offices to men out of a particular regard to their interest and not to their fitness for the places,'—this is the purport of these papers."* The defendant was found guilty, but on account of some informality the verdict was set aside, and the public was so much scandalised by the prosecution that by Harcourt's advice it was dropped.†

Part taken by Harcourt in the Aylesbury case.

A. D. 1705.

When the great case of privilege arose out of the Aylesbury election, the House of Commons was chiefly guided by the advice of Harcourt, and to enable the Tory majority which then bore tyrannical sway to dispose of seats as they thought fit, he very improperly proposed the resolutions "that no action could be brought against a returning officer by an elector," and "that the judgment of the House of Lords determining that such an action was maintainable amounted to a breach of the privileges of the Commons,"—by which extravagant resolutions those privileges received the deepest wound ever inflicted upon them. Yet I cannot but admire the spirit with which he conducted the whole affair—not hesitating to come into direct collision with the Judges and the House of Lords, whatever might be the consequence. Some of his sentiments respecting actions brought in violation of the just privileges of either House I entirely approve of, and I wish that they had been, and that they may be, acted upon:—"*Principiis obsta;* never let your disease grow to such a head as to put you on the necessity of complaining of a judgment of the Lords, but rather check it in its infancy. If an action should be brought against the Speaker or the Serjeant-at-arms for obeying your commands, ought we to sit still here to see what they will do in the Courts below, and afterwards wait for the event in the House of Lords by writ of error? The law of parliament is above the Judges of the Common Law; it is *alieni fori.* If you will induce any person to go into Westminster Hall and to bring an action to question

* 14 St. Tr. 1128.

† But Lynch law was more effectual against Tutchin. For another libel, he was cruelly beaten by ruffians, and lost his life. 14 St. Tr. 1200. He is immortalised in the DUNCIAD.

your rights, a jury may find a verdict that you have no such rights, and judgment shall be given accordingly. Does not this submit your proceedings to the examination and censure of inferior Courts, and may it not soon confine you to such privileges as the other House of Parliament, as the Supreme Court of error, may be pleased to accord to you?"* But in this controversy I am bound to say that I think Somers, Cowper, and the Whig lawyers upon the whole, deserved more praise than those who for party purposes brought such odium upon parliamentary privilege.

His merit in framing the Bill for the union with Scotland.

In the beginning of the year 1707 Harcourt acquired much credit by the manner in which, to cut off long debates, he framed the Bill for the Union between England and Scotland, —whereby all the articles which the Commissioners had agreed upon were recited in the preamble, and enacted by a single clause. "This put those upon great difficulties who had resolved to object to several articles, and to insist on demanding some alterations in them, for they could not come at any debate about them: they could not object to the recital, it being merely matter of fact, and they had not strength enough to oppose the general enacting clause, nor was it easy to come at particulars and to offer provisoes relating to them. It passed through the House of Commons before those who intended to oppose it had recovered themselves out of the surprise under which the form it was drawn in had put them."† He did not speak upon the subject himself, and his name does not occur in the Parliamentary debates, after the discussions which arose out of the case of Ashby *v.* White, till he was once more an opposition leader.‡ When upon the death of Prince George, Lord Somers was made President of the Council and the Cabinet became

* 6 Parl. Hist., 264—267. † 4 Burnet, 176.

‡ However, there seems reason to think that in this interval he delivered speeches which are lost, sometimes against the measures of the government. Swift, in his "Memoirs relating to the Change in Queen Anne's Ministry," when speaking of the Whigs who joined the government in 1705, says: "Upon the admission of these men into employment, the Court soon ran into extremity of low church measures; and although in the House of Commons Mr. Harley, *Sir Simon Harcourt*, Mr. St. John, and some others made great and bold stands in defence of the constitution, yet they were always borne down by a majority."

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entirely Whig, he justly thought it inconsistent with his dignity to serve them, and he resigned the office of Attorney General*, being succeeded by a good Whig, Sir James Montague, brother of Lord Halifax.†

Harcourt's charges as chairman of Quarter Sessions.

While Solicitor and Attorney General, he had tried to prop up the administration in a manner that seems strange to a modern law officer of the Crown. He acted as chairman of the Quarter Sessions for the county of Bucks, and quarterly in charging the Grand Jury delivered a panegyric upon the government. His MS. notes of several of these addresses are preserved in the British Museum, and a few sentences from one of them may be amusing:—"How much happier are we, gentlemen, than our neighbours, who groan under insupportable miseries even to the last degree of slavery, while we live in ease and hospitality, and eat the fruit of our own vine. As, gentlemen, we are blessed with such good laws, so we are under the most auspicious reign of the best of Queens (whom God long preserve!),—a Queen who will impartially put them in execution,—a Queen who is a zealous professor of the religion of the Church of England as established by law, and will always be a promoter of its honour and interest, and a Queen who wishes from the very bottom of her breast there were no separatists from it in her dominions."

He is unjustly deprived of his seat for Abingdon.

A. D. 1705.

He was now to be the victim of such a faction as in a former parliament he had led on to acts of partiality and violence. At the general election which followed the late changes, the Whigs gained a decided majority. Sir Simon Harcourt, however, was again returned for Abingdon, the borough which he had long represented, and in which his interest was still unshaken. But Mr. John Hucks, the beaten Whig candidate, trusting to the blind support of his friends, presented a petition claiming the seat. The case, according to the usage which prevailed till the passing of the Grenville Act, was heard at the bar of the House, the debate

* "As Harley laid down, both Harcourt, then Attorney General, Mansel, the Comptroller of the Household, and St. John, the Secretary at War, went and laid down with him."—4 Burnet, 220.

† This change took place 21st October, 1708. Harcourt's resignation was enrolled in Chancery, being the only instance of that nature in our records.

lasting till past two in the morning, as there was an intense desire on the one side to oust the sitting Member, and on the other to save him. Before the division he himself thus spoke:—"Whatever the determination of this House may be, I know and all impartial men will believe that I am entitled to sit as representative for Abingdon in this parliament. The just construction of the charter, as it has been understood and acted upon for 150 years, deprives my competitor of the shadow of a right, and, even upon his construction of it, I have still a majority of votes. He himself at the close of the poll declared that he had not offered himself with any hope of success, and it was not till he had seen that his party had fared better in other places, that he thought of petitioning. But what a mean and contemptible notion must he entertain of this House? He must suppose that you are to be awed by the word of command which he thinks may be given to expel me, and to substitute himself in my place against the will of the electors, and after his own confession that he was fairly defeated. If it should indeed be declared that I am not duly elected, I shall leave this House, feeling deep compassion for the unfortunate friends who stay behind me, for they must be destined to make a constant but ineffectual struggle against fraud and folly. Whoever suggested this petition, believing there is such a parliament, must be the most abandoned wretch in the world, who has long quitted all notions of right and wrong, all sense of truth and justice, all regard for honour and conscience. But I trust it will be found he makes a most calumnious estimate of a British House of Commons. The Petition charges me personally with many indirect practices; but not an attempt has been made to prove any part of these charges, and all who know me, know that they must be false. As to the indirect practices of my agents—I had no agents. Till the morning of the election I knew of no opposition, and I had made no preparation for a contest. I had every reason to believe that my former services in six parliaments had met with the approbation of the great bulk of my constituents, and that they were willing again to confide to me the high

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trust of representing them.* The electors of Abingdon were not influenced by the solicitations, menaces, and promises used against me, and I trust their example will be imitated by the Members of this House, who are expected to be patterns of purity, independence, and honour." He then bowed and withdrew, and the division took place—when the resolution was carried by a considerable majority, that "John Hucks, Esq., was duly elected and ought to have been returned a burgess to serve in the present parliament for the borough of Abingdon, and that the return for the said borough be amended by substituting the name of the said John Hucks, Esq., for that of Sir Simon Harcourt, Knight."†

This ceremony was accordingly performed next day by the Clerk of the Crown, but Harcourt had soon ample revenge on the Whigs by becoming leading counsel for Dr. Sacheverell, and by inflaming the nation against them as the enemies of the church. If he had continued a member of the House of Commons, his mouth would have been closed as soon as the impeachment was voted.

March 3. 1710. Harcourt counsel for Sacheverell.

When this most preposterous and ill-fated prosecution came to a hearing in Westminster Hall, the chief part assigned to Harcourt was to answer the first article, charging the defendant with having, in his sermon at St. Paul's, traduced the Revolution and denied the lawfulness of resistance. The ground of defence taken, very ably, and, I think, very satisfactorily, was, that both the Church of England and the municipal law of the country inculcate obedience to the civil magistrate, and that cases of justifiable resistance are exceptions to the rule, which are implied, and cannot possibly be anticipated or defined. Harcourt introduced a little false and sophistical reasoning, by saying that "there was no resistance at the Revolution, as the supreme power supposed to be resisted is in this country vested in the legislature, and

* He was Recorder of Abingdon, and seems to have been a great favourite there. I know not whether the custom then prevailed to which another Attorney General, likewise deservedly very popular, who now represents Abingdon, was charged with having conformed to,—of throwing handfuls of gold among the mob on the day of chairing.

† 6 Parl. Hist. 778.

that the Revolution took effect by the Lords and Commons concurring and assisting in it." But he goes on to show that his client had only used the language of great divines and great lawyers, and to ask, "whether, when the general rule of obedience is taught, the particular exceptions out of that rule which may arise are always to be expressed? or whether, when the general rule is laid down, the particular exceptions out of that rule which might arise are not more properly to be understood or implied?" He decently dissembles so far as to speak respectfully of the Revolution, although in his heart he abhorred it: "Such an exception, no doubt, the Revolution was when our late unhappy Sovereign, then upon the throne, misled by evil counsellors, we are told, endeavoured to subvert and extirpate the Protestant religion, and the laws and liberties of the kingdom." He then argues very forcibly in support of his position: "Every minister of the gospel is sufficiently instructed, from law and religion, to press the general duty of obedience, but such extraordinary cases wherein resistance is lawful, wherein it becomes an indispensable duty, are nowhere laid down. The same Apostle who enjoins obedience to the higher powers and non-resistance, commands also servants to obey their masters, and children their parents, in all things; notwithstanding which general precepts, many cases may happen wherein it may be not only unfit but sinful for servants to obey their masters, or children their parents. And yet the Apostle contents himself with pressing the duty of subjection in general, leaving such cases, when they happen, to justify themselves. The cases of resistance to the supreme power of the state are nowhere fit to be considered but in parliament, and the Parliament itself hath never yet thought fit otherwise to consider them than, retrospectively, to sanction what had of necessity been done contrary to the general rule; but never went so far as to enumerate the cases in which, for the future, it might be lawful for the subject to resist. The danger of prospectively introducing an exception is well illustrated by the late Mr. Pym, in his speech on the impeachment of Dr. Mainwaring: 'The inhabitants of the duchy of Normandy, being much oppressed by the

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King's officers, petitioned him for redress, and he granted them a charter, whereby they were, for the future, to be free from all subsidies and talliages imposed by him and his successors, *unless when great necessity required*,—which small exception devoured all their immunities.' In the same manner, all allegiance would be devoured by the express exception of lawful resistance. Surely none can show themselves truer friends to the Revolution than those who prove that it may stand without impeaching the doctrines of our church, or any fundamental law of the kingdom. Suppose that on the day in question, when the rubric requires the reading of one of the homilies on the duty of obedience, or a sermon to the like effect, the Doctor had chosen to praise the Revolution, and to inculcate the duty of resistance, would he not have been told by his ecclesiastical superiors that he ought to have imitated the example of the Apostles and the fathers of the church? and if he had been indicted for his sermon, might not the Judges have said to the jury, 'It is easy to discern what spirit he is of, what party he belongs to, and what he aims at; he has not been preaching in defence of the late Revolution to show the justice of it; he was covering the treason of his heart, and, under pretence of praising one revolution, a friend of the Pretender was labouring to bring about another?'" *

Harcourt is returned to parliament for Cardigan.

Just as Harcourt concluded this address, it was publicly announced that he had been returned to parliament for the borough of Cardigan. The Whigs asserted that he was privately in possession of the intelligence while he was inveighing against the impeachment, but they did not venture to bring forward any charge against him for breach of privilege. When he took his seat in the House of Commons, he was loudly cheered by the Tories, and there were clear indications of their speedy triumph.

Downfal of the Whigs.

A wit in 1710 might have anticipated Sheridan's observation on the Whigs in 1806: "I have heard of men knocking their heads against a brick wall, but now we see men build-

* 15 St. Tr. 196—213.

ing up a brick wall to knock their heads against."* One of the earliest official changes in consequence of the cry of the Church being in danger, was the removal of Sir James Montague, who had opened the case against Sacheverell, from the office of Attorney General, and the appointment of the leading counsel for Sacheverell to succeed him.† For prudential reasons he was desirous to have continued some time longer a law officer of the crown, in which situation he might accumulate more money for his family, and in case of any political reverse he had his profession to fall back upon.‡ This was the reason for the pressing solicitations that Lord Cowper would retain the Great Seal. But as this high-minded man was inexorable, and actually forced it into the hands of Queen Anne, Harcourt had no choice; for the Tories had no other great lawyer in whom they could confide, and he himself would not have liked to have seen put over his head a member of his own party whom it might have been difficult to remove. He therefore agreed with Harley and St. John to hold the Great Seal under them; but, to give time for the necessary preparations for the change, it was for a short time put into commission, the Commissioners being Lord Chief Justice

A.D. 1710.
Sept. 18.

* Harcourt himself ascribed the change in the government entirely to this prosecution. Swift, in his "Journal to Stella," 24th April, 1711, speaking of Sacheverell, says — "He hates the new ministry mortally, and they hate him, and pretend to despise him too. They will not allow him to have been the occasion of the late change, — at least some of them will not, — *but my Lord Keeper owned it to me the other day.*"

† Swift's "Journal to Stella" at this time is curious as to the reports about Harcourt. — *Sept.* 14. "We hear the Chancellor is to be suddenly out, and Sir Simon Harcourt to succeed him."

15*th.* "We hear Sir Simon Harcourt is made Lord Keeper; so that now we expect every moment that the parliament will be dissolved."

17*th.* "Sir Simon Harcourt is made Attorney General, and not Lord Keeper."

‡ "The custody of the Great Seal, as Lord Keeper, was privately offered to Sir Simon Harcourt; who, besides his eminent adherence to the Church party, on many other occasions had exerted his parts, in a very distinguishing manner, in the defence of Dr. Sacheverell. But he declined that trust for the present, and in the mean time contented himself with the place of Attorney General, which he formerly discharged with great reputation. He appeared the first time in that quality at the Council held on the 21st of September, at which time the Earl of Rochester, the Duke of Buckingham, and Mr. St. John were sworn of that most honourable assembly." — *Boyer's Polit. State*, vol. i. p 7.

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Great Seal delivered to Harcourt.
A.D. 1710.

Trevor, Mr. Justice Tracy, and Mr. Baron Scrope.* It was now vacation time, and the Lords Commissioners never sat in court, for in three weeks the Great Seal was demanded from them, and it was delivered to Sir Simon Harcourt.

* "Anno 8$^{vo}$ Anne Reginæ, 26th Sept. 1710.

"Sir *Thomas Trevor*, Lord Chief Justice of her Majesty's Court of Common Pleas, *Robert Tracy*, Esq., one of the said Court of Common Pleas, and *John Scroop*, Esq., one of the Barons of her Majesty's Court of Exchequer in Scotland, did each of them receive between the hours of one and two on the 26th day of Sep$^{t}$. in the year aforesaid, from her Majesty's royal hands, at Kensington, a Commission then and there sealed by her Majesty, constituting them Commissioners for the custody of the Grt. Seat of Grt. Britain, the same Seal being the day before resigned to her Majesty by W$^{m}$. Ld. Cowper, Ld. Chancellor, after which the said Ld. Chief Justice Trevor, Mr. Justice Tracy, and Mr. Baron Scroop took the oaths of allegiance and supremacy, and the oath usually administered to the Ld. Chancellor or Ld. Keeper, kneeling, the Bible being held to them, as also the oaths read to them, by the Deputy Clerk of the Crown, in the presence of Mr. Secretary St. John, Sir Simon Harcourt, her Majesty's Att. General, the Clerk of the Hanaper. And then her Majesty delivered the Grt. Seal to the said Ld. Chief Justice Trevor, Mr. Justice Tracy, and Mr. Baron Scroop, who, having had the honour to kiss her Majesty's hand, departed (the Ld. Chief Justice carrying the purse), and returned to Serjeant's Inn in Fleet."—*Crown Off. Min. Roll*, 1701—1714.

# CHAPTER CXIX.

## CONTINUATION OF THE LIFE OF LORD HARCOURT TILL THE DEATH OF QUEEN ANNE.

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Oct. 19. 1710. His installation as Lord Keeper.

THE ceremony of transferring the Great Seal took place at Hampton Court.* We have no account of the speeches made on the occasion, but we need not doubt the Queen expressed her high satisfaction at having, for the Keeper of her conscience, a champion who had been so instrumental in procuring for the Church its present triumph, and that he dexterously contrived to reconcile his devoted attachment to her throne with his belief in the indefeasible rights of royalty. He was at the same time sworn a member of the Privy Council. On the first day of the ensuing Term, he was duly installed in the Court of Chancery, after a procession to Westminster Hall, in which the Tory Peers mustered in great strength, as well as the heads of the law. These venerable sages, with few exceptions, being strongly inclined to Tory principles, could not conceal their exultation to see at the head of the profession one of whom they were justly proud for his learning, for his abilities, and for his honourable career.†

Present and congratulation to him from Sacheverell.

He was now almost overpowered by letters and addresses of congratulation in prose and in verse, and his illustrious client, Dr. Sacheverell, presented to him a magnificent piece

* London Gazette.—"Hampton Court, October 19. 1710. Her Majesty was pleased to deliver the Great Seal to Sir Simon Harcourt, Knt., who was thereupon sworn one of Her Majesty's most Honourable Privy Council, and Lord Keeper of the Great Seal of Great Britain; and he accordingly took his place at the board."

† "19th October, 1710.—The Lords Commissioners for the custody of the Grt. Seal of Grt. Britain having delivered the Great Seal to the Queen on Wednesday, the 18th of October, 1708, her Ma^ty was pleased to deliver the same to Sir Simon Harcourt, Knt., her Att. Gen., on the day following at Hampton Court, with the title of Ld. Keeper of the Grt. Seal of G. B., who on Monday the 23rd day of the same October, being the 1st time of his sitting in Westm. Hall, was accompanied to the Chancery Court by the Earl of Rochester, Ld. President of the Councill, the Duke of Ormonde, Ld. Lieutenant of Ireland, the Earls of Scarsdale, Anglesey, and Overy, the Lord Hyde, and several other persons, and in their presence did then and there take the oaths of allegiance and supremacy, and the oath of Ld. Keeper of the Grt. Seal of Gt. Britain, the Ma^r of the Rolls holding the book, and the Clerk of the Crown reading the oaths; after which the Lords departed, and left the Lord Keeper in the said Court."—*Cr. Off. Min. Roll*, 1701—1714.

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of plate, in the form of an altar, for washing after dinner—bearing the following inscription:

"VIRO HONORATISSIMO,
UNIVERSI JURIS ORACULO,
ECCLESIÆ ET REGNI PRÆSIDIO ET ORNAMENTO,
SIMONI HARCOURT, EQUITI AURATO,
MAGNÆ BRITANNIÆ SIGILLI MAGNI CUSTODI,
ET SERENISSIMÆ REGINÆ À SECRETIORIBUS CONSILIIS,
OB CAUSAM MEAM CORAM SUPREMO SENATU,
IN AULÂ WESTMONASTERIENSI
NERVOSÂ CUM FACUNDIÂ ET SUBACTÂ LEGUM SCIENTIÂ
BENIGNÈ ET CONSTANTER DEFENSAM;
OB PRISCAM ECCLESIÆ DOCTRINAM,
INVIOLANDAM LEGUM VIM,
PIAM SUBDITORUM FIDEM,
ET SACROSANCTA MAJESTATIS JURA
CONTRA NEFARIOS PERDUELLIUM IMPETUS
FELICITER VINDICATA;
VOTIVUM HOC MUNUSCULUM
PERPETUÆ GRATITUDINIS PIGNUS,
D. D. D.
DEVINCTISSIMUS CLIENS
HENRICUS SACHEVEREL, S. T. P.
ANNO SALUTIS MDCCX."*

Lord Harcourt as an Equity Judge.

Lord Harcourt's administration of justice in the Court of Chancery seems to have given contentment to the public, although lawyers sometimes sneered at him, and he did not leave behind him the reputation of a profound Equity Judge. Swift, become the trumpeter of the new ministers, in his celebrated parallel between them and their predecessors, ventures to set him above Lord Somers and Lord Cowper: "Was any man more eminent in his profession than the present Lord Keeper, or more distinguished by his eloquence and great abilities in the House of Commons? and will not his enemies allow him to be fully equal to the great station he now adorns?" Then ironically acquitting him of the charges of immorality, which he wishes to fasten on the Whig Chancellors, he says, "after all, to speak my private opinion, I cannot think these such mighty objections to his character as some would pretend."† The Whig writers, to their credit, not having retaliated by the invention of calumny, Harcourt is allowed to have been untainted by corruption or any other vice. He was not only free from the imputation of taking money from suitors, which after Lord Bacon's

* Sloane MS. Brit. Mus. 4292.

† Examiner, No. 27.

impeachment was almost unknown, but he was not liable to be accused of trafficking in the sale of offices in his gift, which could be said of very few Chancellors till after the impeachment of Lord Macclesfield. Although he issued no general orders to improve the practice of the Court, and proposed no bills for the amendment of the law, the cases which came before him, generally speaking, were satisfactorily disposed of. He had been when at the bar the most eminent counsel in the Court of Chancery *, and his experience, combined with his reading and his admirable manner, enabled him to occupy his new seat with ease and dignity.

The chief herald of his judicial fame is PEERE WILLIAMS, from whose Reports a few interesting cases decided by him may be selected. In England, our modified system of "substitutions" or "entails," rests mainly on the appointment of "trustees to preserve contingent remainders," whereby a father may have only an interest for life in land, although there be no one *in esse* in whom any ulterior beneficial interest is vested, — and the land cannot be alienated till a son has been born, and has reached the age of twenty-one. An attempt was made in the beginning of the reign of Queen Anne to break through this, by inducing the trustees to join with the father in conveying before the birth of a son: but the attempt was crushed by Lord Keeper Harcourt, who held that such a conveyance, though it would carry the legal estate, was a breach of trust, saying, "it is so very plain and reasonable, that if there be no precedent I will make one." †—He first established the important doctrine, that if money is directed either by deed or will, to be laid out in land, the money shall be taken to be land, even as to collateral heirs. ‡

* The rarity of equity reports prevents me from proving this assertion by a reference to "the books;" but I have for it what may be called "evidence of reputation." J. Philips's Poem on Cyder, addressed in 1706 to the younger Harcourt then abroad, contains this invocation:

"Return, and let thy father's worth excite
Thirst of pre-eminence; see how the cause
Of widows and of orphans he asserts
With winning rhetoric——"

† *Pye* v. *Gore*, 1 Peere Williams, 128., afterwards affirmed by the House of Lords, 1 Br. P. C. 359.; and see *Mansel* v. *Mansel*, 2 P. W. 678.

‡ *Lingen* v. *Sowray*, 1 P. W. 172.

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He held, that where by a family settlement a provision is made for younger children, the eldest child of the marriage, being a daughter, shall be deemed a younger child in equity, if there be a son, or the estate by the settlement goes to a remainder man.* On an application for a writ of "ne exeat regno," the question arose whether, since the Union, Scotland was for this purpose to be considered in or out of the kingdom. *Lord C. Harcourt.*—"Scotland, being out of the jurisdiction of this Court, and consequently out of the reach of the process thereof, the defendant's going into Scotland is equally mischievous to the suitor here, as if he went actually beyond the seas."† The writ was awarded — with an intimation that it should be worded "not to go out of the realm, *or to Scotland.*"‡ On points of practice, he very openly acknowledged the superior knowledge of Sir John Trevor, the Master of the Rolls — as in the instance where he altered his ruling upon the opinion of that Judge, respecting the regularity of process issued against a wife during her husband's absence abroad.§

I am afraid that he was seduced by the excitement of politics, and by the *agrémens* of the "Brothers," the "October," and other clubs, of which he was a member, from paying devoted attention to the business of his Court, and that I can hold him up for imitation as a Judge only for impartiality and integrity.

We must now view him in the Senate, where he appears to greater advantage. At the general election, shortly before his promotion, he had been returned to the House of Commons for his old borough of Abingdon, and he would

* *Beale* v. *Beale*, 1 P. W. 244.

† Done's Case, 1 P. W. 263.

‡ Harcourt seems to have given mortal offence to Vernon, the reporter, who practised as a counsel regularly before him, but spitefully suppresses his best decisions, and gives doubtful ones. See 2 Vernon, 664—688. I suspect that the reporter may have been a Whig, and copied the Tory blacksmith, who in shoeing the horse of a Whig always lamed him. When I was a nisi prius reporter I had a drawer marked "BAD LAW," into which I threw all the cases which seemed to me improperly ruled. I was flattered to hear Sir James Mansfield C. J. say, "Whoever reads Campbell's reports must be astonished to find how uniformly Lord Ellenborough's decisions were right." My rejected cases which I had kept as a curiosity — not maliciously — were all burnt in the great fire in the Temple when I was Attorney General.

§ Ante, p. 59.

no longer have been in danger of being ousted by a Whig majority; but he received the Great Seal before parliament met, and although it seems to have been formerly thought that a Lord Keeper might sit in the House of Commons, although a Lord Chancellor could not, the Great Seal, with whatever title, was clearly a disqualification to act as a representative of the people, after the statute giving the same rights and privileges to the holder of the Great Seal, under either appellation.* It seems most unaccountable that a whole year was allowed to elapse before he was raised to the peerage, as the ministry was very weak in the upper House, both in numbers and debating power,—and, without a single law Lord to support it, was daily assailed by the Ex-chancellors Somers and Cowper. There never hitherto had been an instance of a gentleman being taken from the bar to hold the Great Seal being immediately made a Peer; but Harley and St. John were not very scrupulous about precedent in their peerage promotions;—insomuch that, having afterwards made Harcourt a Baron by himself,—when they at last came to their famous batch of a dozen, they included in it Trevor, the Tory Chief Justice of the Common Pleas, that the law Lords might be equally balanced.

Harcourt Speaker of the House of Lords.

Nov. 25. 1710. His address in returning thanks to Lord Peterborough.

Whatever might be the reason for the delay, during the whole of the session, which began in Nov. 1710, Harcourt had only to sit as Speaker.† On one interesting occasion, however, he was suddenly called upon for an exercise of his oratorical powers. After long and angry discussions respecting the conduct of the war in Spain, a vote of thanks to the Earl of Peterborough was carried, and as he was present, and was to

* 5 Eliz. c. 18.

† During this interval he is said to have got into a scrape at Court by presenting there a batch of Scotch representative peers to her Majesty. The rule being, that a peer could only be presented by a peer, the Earl of Rochester, the Queen's uncle, the president of the council, pointed out the enormity of which he had been guilty; but Ex-chancellor Lord Cowper good-naturedly came to his rescue, and insisted that this being a question of precedence, and the Lord Keeper, though a commoner, having precedence of all peers, there had been no breach of etiquette. The most absurd rule of this sort still subsisting, is that upon a division in the House of Lords, the tellers on opposite sides must be of equal rank. A proposal that a baron should tell against a duke or even against a viscount, would be received with horror—although all there are supposed to be *pares*.

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set off next morning on foreign service, the Lord Keeper was ordered to return him the thanks of the House forthwith.

*Lord Keeper Harcourt.* — "My Lord Peterborough, I am commanded by my Lords to return their thanks to your Lordship for your many eminent and faithful services to your Queen and country during your command in Spain. My Lord, the thanks of this illustrious assembly is an honour which has been rarely paid to any subject; but never after a stricter inquiry into the nature of any service, upon a more mature deliberation, or with greater justice, than at this time to your Lordship. Such is your Lordship's known generosity, and truly noble temper, that I assure myself the present I am now offering to your Lordship is the more acceptable, as it comes pure and unmixed, and is unattended with any other reward which your Lordship might justly think would be an alloy to it. * My Lord, had more days been allowed me than I have had minutes, to call to mind the wonderful and amazing success which perpetually attended your Lordship in Spain, (the effect of your Lordship's personal bravery and conduct,) I would not attempt to enumerate your particular services, since I should offend your Lordship by the mention of such as I could recollect, and give a just occasion of offence to this House by my involuntary omission of the far greater part of them. Had your Lordship's wise councils, particularly your advice at Valencia, been pursued in the following campaign, the fatal battle of Almanza, and our greatest misfortunes which have since happened in Spain, had been prevented, and the design upon Toulon might have happily succeeded. I shall detain your Lordship no longer, than, in obedience to the order I have received, to return your Lordship, as I do, the thanks of the House, for your eminent and remarkable services to your Queen and country during your command in Spain." Although the Lord Keeper had ventured to touch on party politics, and to show his party propensities, the address was approved of, and ordered to be entered in the Journals.

* This is a sarcasm upon the alleged covetousness of the great Whig general, who was loaded with riches as well as honours.

Lord Harcourt's address to Lord Treasurer Oxford.

A few months afterwards, Harley having acquired immense popularity from the attempt of the Marquis de Guiscard to stab him before the Privy Council, and having been created Earl of Oxford, and Earl Mortimer, and having received the staff of Lord High Treasurer, — when he was to be sworn into his new office, the Lord Keeper thus addressed him: — "My Lord Oxford, the Queen, who does every thing with the greatest wisdom, has given a proof of it in the honours she has lately conferred upon you, which are exactly suited to your deserts and qualifications. My Lord, the title which you now bear could not have been so justly placed on any other of her Majesty's subjects. Some of that ancient blood, which fills your veins, is derived from the Veres: and you have showed yourself as ready to sacrifice it for the safety of your Prince, and the good of your country, and as fearless of danger on the most trying occasions, as ever any of that brave and loyal house were. Nor is that title less suited to you, as it carries in it a relation to one of the chief seats of learning; for even your enemies, my Lord (if any such there still are), must own that the love of letters, and the encouragement of those who excel in them, is one distinguishing part of your character. My Lord, the high station of Lord Treasurer of Great Britain, to which her Majesty has called you, is the just reward of your eminent services. You have been the great instrument of restoring public credit, and relieving this nation from the heavy pressure and ignominy of an immense debt, under which it languished; and you are now entrusted with the power of securing us from a relapse into the same ill state out of which you have rescued us. This great office, *my Lord*, is every way worthy of you, particularly on the account of those many difficulties, with which the faithful discharge of it must be unavoidably attended, and which require a genius like yours to master them. The only difficulty, which even you, *my Lord*, may find almost insuperable, is how to deserve better of the Crown and kingdom, after this advancement, than you did before it." This custom of ministers of state extravagantly praising each other, has surely been well laid aside; and no one would think the

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better of Sir Robert Peel or his policy for a panegyric pronounced upon them by Lord Chancellor Lyndhurst.

He is made a Peer. Sept. 3. 1711.

Lord Keeper Harcourt's next subject of eulogy was, according to the custom of the age, — himself. He was soon after raised to the peerage, by the title of Baron Harcourt of Stanton-Harcourt, in the county of Oxford, and the preamble of his patent celebrated the splendour of his Norman ancestors, commemorated the Harcourts who had particularly distinguished themselves under Edward IV. and Charles I., averred that there never had been one of that race who had not been eminent for his love to his country and loyalty to his Prince, and thus spoke of Sir Simon: "Descended from such noble ancestors, he suffered indeed in his paternal inheritance, which was diminished by the fury of the civil wars, but their glory acquired by military virtue descended upon him unimpaired; and this he, having assumed the gown, increased by the force of his genius and his eloquence; so various are his powers, that many doubt whether he most excels in pleading causes at the bar, or in debating the affairs of the nation in the senate, but all agree that he is the most eloquent of lawyers, and the most learned of orators." After praising his private virtues in the same strain, the Queen is made to say, "Him whom, endowed with such high qualities, all clients have wished to defend their causes,—not without reason we preferred to be our Attorney General, and finding other employments unsuitable to his extraordinary capacity, we have advanced to the highest pitch of forensic dignity, and made him our supreme Judge of Equity. Still his conduct is more and more meritorious in proportion to his elevation." Having mentioned his despatch and his anxiety to furnish cheap as well as speedy justice to the suitors, she proceeds, "Such services being grateful to us, honourable to himself, and beneficial to the state, we think deserving of higher rewards; therefore, that our most able Judge may not be without a voice in our supreme Court, that he who can think and speak so well should not be silent in an assembly of the eloquent, we grant him a place among the Peers of our realm, that he may add splendour to that order from which he and his posterity will derive so much,

Preamble to his patent.

and we desire that he take his title from that place which, for six hundred years, has borne the name and been the patrimony of the family of Harcourt." *

No reports of his speeches.

There can be no doubt that Lord Harcourt now took a leading part in the debates in the House of Lords. Supported by Lord Trevor (made a Peer as Chief Justice of the Common Pleas, while Holt Chief Justice of the King's Bench, being a Whig, had died a Commoner), he manfully stood up to Lord Somers and Lord Cowper, and although he was often in danger of being beaten in the division, he did not quietly allow his party to be vilified,—not

* Jus Regium nobis a Deo commissum nulla in re lubentius exercemus, quam cum debita Virtuti elargiamur Præmia, Virosq. tum suis, tum majorum suorum meritis insignes, omni, quo par est, honoris genere augeamus. Hos inter elucet Prædilectus et perquam Fidelis Conciliarius noster, Simon Harcourt, Miles, Magni Sigilli nostri Custos. Longa illum decorat Proavorum Series a Normannicis usq. temporibus et peramplis Fortunis, et omni Laude Bellica florentium, quorum unus, ob rem strenue sub Edwardi Quarti vexillis gestam, periscelide Equestri donatus est; alter, contra Perduelles Hibernicos pro Carolo Regum optimo fortiter dimicans, Anglorum primus occubuit: Nec in ea Gente quisquam repertus est, cujus non esset spectata semper erga Patriam Charitas, erga Principem Fides: His ille ortus Majoribus, Rei quidem Familiaris hæreditatem Furore Civili imminutam, Gloriæ integram accepit: Quam Virtute Militari partam, Ingenii sui, et Eloquentiæ vi auxit togatus. Ita enim variam, illi multiplicemque esse dicendi facultatem intelleximus, ut, an tractandis pro Tribunali causis, an habendis ad Senatum Concionibus, aptior accederet, dubitent multi, uno ore omnes fateantur, eum et Jurisconsultorum disertissimum esse, et Disertorum jurisconsultissimum. Suæ huc oratoriæ Laudi domesticas adjunxit Virtutes, Magnanimitatem et Fidem: Quarum Robore suffultus, in tuendo quod susceperat officio, contemnendisque periculis, constanter perseveravit: et Amicitiæ jura, sive in rebus secundis, sive in adversis, sancte coluit. Quem itaque tantis animi dotibus instructum, sibi *Clientium* nemo non exoptavit Patronum, eum nos Negotiis nostris, Forumque spectant. haud temere admovimus Procuratorem; eum ad Attornati nostri munus, quod cum dignitate, quoad licuit, semel sustinuerat, altera vice accersivimus; eum tandem cum magno illius Ingenio minora esse hæc omnia sentiremus, in ipso Forensium Honorum apice collocavimus, æqui, bonique Cognitorem et Interpretem summum. Pergit de nobis, ac de bonis omnibus præclarius adhuc mereri; et hanc ipsam Provinciam, cæteris, quas gessit, quanto splendidior est, tanto impensius ornare: Litium multitudinem indies minuit, Judiciorum moras reserat, et, ut petitorum cuique constet quam minimo honestæ contentionis felix exitus, egregie cavet. Quæ quidem cum nobis summopere sint grata, ipsi honorifica, Reique Publicæ salutaria, Præmiis uberioribus remuneranda censemus. Ne itaque in amplissimorum Judicum Consessu suffragii expers sit Justitiæ Vindex integerrimus, ne in Eloquentium concilio sit elinguis, sentiendi, dicendique Author gravissimus, Procerum ordini continuo adscribatur, eidemque splendoris non nihil afferat, a quo multum et ipse, et ipsius posteri haurient. Quæ autem *Harcourtiano* Nomine ac Patrimonio Sexcentos jam annos amplius inclarescit sedes, eadem, titulo etiam quem nunc impertimus, honestetur, in omne Ævum (si annuerit Deus) duraturo.

Sciatis, &c.

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content to do the routine business of his office, and to receive its emoluments. Yet there is not the slightest scrap remaining of any of his speeches, nor is his name even mentioned in the "Parliamentary History" during the rest of this reign. The two chief Ministers of the Crown, following the practice which prevailed till the premiership of Sir Robert Walpole, had come from the House of Commons to the House of Lords; but there, in the last years of Anne, was the chief battle-field of the opposite factions, and on the Tory side Harcourt was considered the third man in debate as well as in counsel.* The circumstance of his not being noticed by any reporter is no argument against his celebrity in his own time, for Bolingbroke, allowed to be easily the first orator in either House during the present reign, in this respect shared his fate.

He receives the title of Lord Chancellor.

When the treaty of Utrecht had been agreed upon between the English and French negotiators, and was about to be formally signed,—to add to Harcourt's dignity and weight in defending it, he had the title of Lord Chancellor conferred upon him, instead of that of Lord Keeper.† A long con-

* About this time in England the House of Lords seems to have had the same superiority in knowledge, talent, and moderation over the House of Commons, which in America the Senate now has over the House of Representatives. Our House of Commons gained its ascendency in the reign of George II. under Walpole, who was the first prime minister who chose to remain there.

† Anno, 1713. 12° Reginæ (7 Aprili).

The Rt. Honble. Simon L[d] Harcourt, Baron of Stanton Harcourt, L[d] Keeper of the Gt. Seal of Gt. Britain, having by her Majesty's comand delivered the said Seal to her Ma[ty] in Council, at her Palace of St. James's, on the 7th of April, in the 12th y[r] of her reign, her Ma[ty] was graciously pleased immediately to redeliver it to him with the title of L[d] High Chancellor of Gt. Britain, whereupon his Lordship, the 8th of April aforesaid, took the oaths appointed to be taken instead of the oaths of allegiance and supremacy, and the oaths of Chancellor in open Court at his house in Lincoln's Inn Fields, the M[r] of the Rolls holding the Book, and the Clerk of the Crown reading the oaths.—*Cr. Off. Min.*, 1701—1714.

"Saint James's, April 7. 1713.

"This day the Right Hon. Simon Lord Harcourt, Baron of Stanton Harcourt, Lord Keeper of the Great Seal of Great Britain, having, by Her Majesty's command, delivered to Her Majesty in Council the Great Seal of Great Britain, Her Majesty was graciously pleased immediately to restore it to him again, with the title of Lord High Chancellor of Great Britain, whereupon his Lordship took the oaths appointed to be taken, instead of the oaths of allegiance and supremacy, and also the oath of Lord High Chancellor of Great Britain."—*London Gazette.*

Swift's "Journal to Stella," *April* 7. 1713.—"My Lord Keeper Harcourt was this night made Lord Chancellor."

gratulatory poem was on this occasion addressed to him*, from which I shall make a few extracts, to show how it was then thought that Chancellors were to be pleased:—

Poems in his praise.

"Th' enraptur'd Muse to a glad nation sings
First the great race from which our Harcourt springs,
Noble his blood, and ancient his descent,
E'er since to Norman yoke Britannia bent."

Harley and he are then represented as attacking the poor Whigs in the House of Lords, and utterly destroying them:—

"From such united hearts, and hands, and tongues,
Well might we hope redress of all our wrongs.
These, these are they who stemm'd th' impetuous tide
Of factious boldness and rebellious pride.
Thus when two Lions from the forest roar,
And shake the neighbouring hills and distant shore,
Tigers and Wolves, and all the beasts of prey,
Draw in their dastard tails and sneak away.
Thus when a brace of Eagles, towering high,
Purge of rapacious fowls the darken'd sky,
The stork, the vulture, and the chattering daw,
Kites, buzzards, bitterns, hawks, and rooks withdraw."

Next comes a testimony to our Chancellor's judicial excellence:—

"Thou, Harcourt, o'er our laws art bid preside,
Most learn'd expounder, most unerring guide,
To thee the poor, to thee the friendless fly,
To thee the widow and the orphan cry,
Each suit a just and speedy judgment ends
And cheap success the honest cause attends."

His Peerage is thus celebrated:—

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* It is a folio of thirty-five pages. The title, with the four mottoes, may be amusing:

A
POEM
On Occasion of the Promotion of the Right Honourable
THE LORD KEEPER HARCOURT,
TO BE
LORD HIGH CHANCELLOR OF GREAT BRITAIN,
The 7th of April, 1713.

"Tum pietate gravem ac meritis si forte virum quem
Conspexere, silent, arrectisque auribus astant:
Ille regit dictis animos, et pectora mulcet."—VIRG.

———— "Et quid facundia posset
Tum patuit."—Ov.

"Ille Deæ donis, et tanto lætus honore."—VIRG.

"Quid facit interea qui nil nisi prælia noscit."—Ov.

By Mr. H. CRISPE.

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"Thy title great without exchange of name,
Harcourt could only answer Harcourt's fame;
The noblest style and sweetest could be found,
All hearts retain it and all tongues resound."

Finally, the poet anticipates immortality for his patron and himself:—

"Some loftier Muse shall yet in deathless lays
Sing first our Anna's, next our Harcourt's praise,
Your matchless virtues will sure credit bring
To all the wonders poets e'er can sing,
Their names with yours, as prophet, I divine
In British annals shall for ever shine;
Perhaps, not quite forgot this humble Muse of mine."

The Chancellor might have reasonably expected long to enjoy his new dignity. The peace being approved of by both Houses, the Government seemed firmly established; Tory measures were sure to pass the Commons by acclamation, and in the Upper House the Whigs found themselves in a lessening minority. The Queen was more than ever adverse to them on account of the ingratitude and rudeness of the Duchess of Marlborough, and, as her Majesty was still in middle life, their prospects appeared most dreary. But from this time Harcourt found only discord and distraction in the Cabinet, and he was obliged to make his election between the two great chiefs of the Tory party, who, from their struggle for superiority, and the different views which they took respecting the succession to the Crown, soon became mortal enemies. He had hitherto been on equally good terms with both, and, with the assistance of Swift*, had contrived, not-

Divisions in the Cabinet between Bolingbroke and Oxford.

Connection between Harcourt and Swift.

* Swift first made Harcourt's acquaintance on coming to England, as the change of government was taking place in the autumn of 1710.

*October* 10. "I dined with Mr. Harley to-day, who presented me to the Attorney General, Sir Simon Harcourt, with much compliment on all sides."—*Journal to Stella.*

A few more extracts from Swift, with reference to the Lord Keeper, may prove interesting:

"It was Mr. Harley's custom, every Saturday, that four or five of his most intimate friends among those he had taken in upon the great change made at Court should dine at his house, and after about two months acquaintance, I had the honour always to be one of the number. This company at first consisted only of the Lord Keeper Harcourt, the Earl Rivers, the Earl of Peterborough, Mr. Secretary St. John, and myself; and here, after dinner, they used to discourse and settle matters of great importance."—*Memoirs relating to the Change in Queen Anne's Ministry.*

"I dined with Mr. Harley to-day. Every Saturday, Lord Keeper, Secretary St. John, and I, dine with him, and sometimes Lord Rivers, and they let in none else. I stayed with Mr. Harley till nine, when we had much discourse

withstanding occasional differences, to keep them on decently good terms. Being one of the club of sixteen, composed of Cabinet Ministers and leading supporters of the government, who called each other "Brother," and dined weekly at each other's houses, he selected the *mollia tempora fandi*, and when Champagne and Tokay, of which they freely partook, had dissipated for a season the animosities of rivalry, he tried to impress upon them the importance of their mutual cordiality to their country, to their party, and to themselves.* He was likewise a member of the smaller club which dined every Saturday with the Treasurer, and to which hardly any others but St. John and Swift were admitted, and there, while they

together after the rest were gone; and I gave him very truly my opinion when he desired it."—*Journal to Stella*, 3d March, 1711.

"After dinner we had coarse Doiley napkins, fringed at each end, upon the table to drink with. My Lord Keeper spread one of them between him and Mr. Prior: I told him I was glad to see there was such a fringeship (friendship) between Mr. Prior and his Lordship."— Swift's *Journal to Stella*, p. 287.

"I went in the evening to see Mr. Harley; and, upon my word, I was in perfect joy. Mr. Secretary was just coming out of the door, but I made him come back; and there was the old Saturday club, Lord Keeper, Lord Rivers, Mr. Secretary, Mr. Harley, and I."— Ib. 249.

"I am sometimes talked into frights, and told that all is ruined; but am immediately cured when I see any of the ministry. My comfort is, they are persons of great abilities, and they are engaged in a good cause. And what is one very good circumstance, as I told three of them (Harley, St. John, and Harcourt) the other day, they seem heartily to love one another in spite of the scandal of inconstancy which Court friendships lie under."—*Swift's Letter to Lord Peterborough*, Feb. 1711.

*July* 5. 1711. "I dined to-day at our society, and we are adjourned for a month, because most of us go into the country. We dined at Lord Keeper's with young Harcourt, and Lord Keeper was forced to sneak off and dine with Lord Treasurer, who had invited the Secretary and me to dine with him; but we scorned to leave our company, as George Granville did, whom we have threatened to expel. However, in the evening, I went to Lord Treasurer, and, among other company, found a couple of Judges with him. One of them, Judge Powell, an old fellow with grey hairs, was the merriest old gentleman I ever saw; spoke pleasant things, and laughed and chuckled till he cried again."

"I was to have dined to-day with Lord Keeper, but would not, because that brute, Sir John Walter, was to be one of the company. So I dined with Lord Treasurer, where there was none but Lord Bolingbroke."—*Journ. to Stella*, 13th Jan. 1713.

Lord Harcourt showed as much deference as Harley and St. John to Swift, and used to say of him, "Dr. Swift is not only our favourite, but he is our governor." The Dean was, in fact, a leading member of the government. He had a seat in the cabinet, without office, and was of great use to his colleagues, not only by his pen, but by his advice. If the Reverend Sydney Smith had assisted at Earl Grey's cabinet dinners, he might have supplied them not only with wit, but with wisdom.

* Young Harcourt, the Chancellor's son, was the secretary to this club, under the directions of his father.

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planned the peace of Europe, he pointed out the necessity of peace in the cabinet. Decency was so well preserved, that even Swift for a time was not aware of the jealousies which had subsisted from the very formation of the Tory government. There could hardly be," he says, "a firmer friendship in appearance than what I observed between those three great men, who were then chiefly trusted, I mean the Lords Oxford, Bolingbroke, and Harcourt. I remember, in the infancy of their power, being at the table of the first, where they were all met. I could not forbear taking notice of the great affection they bore to each other, and said, 'I would venture to prophesy that however inconstant our Court had hitherto been, their ministry would certainly last, for they had the church, the Crown, and the people entirely on their side:' then it happened that the public good and their private interest had the same bottom, which is a piece of good fortune that does not always fall to the share of men in power: but principally because I observed they heartily loved one another, and I did not see how their kindness could be disturbed by competition, since each of them seemed contented with his own district, so that notwithstanding the old maxim which pronounces Court friendships to be of no long duration, I was confident theirs would last as long as their lives. But it seems the inventor of that maxim happened to be a little wiser than I, who lived to see this friendship first degenerate into indifference and suspicion, and thence corrupt into the greatest animosity and hatred, contrary to all appearances, and much to the discredit of me and my sagacity."*

While imminent peril hung over the administration from the risk of a rupture of the negotiations for peace, and the risk of the treaty being condemned by parliament, the difficulty of preventing dissensions in the cabinet was comparatively small; but now the party seemed secure of power, and the question arose, Who was to be at the head of it? Bolingbroke, greatly excelling his rival in eloquence and in energy of character, would bear no superior, while Oxford, confident from his higher rank, longer experience, and better

* *Inquiry into Behaviour of the Queen's last Ministry.*

moral character, was for centring all power and patronage in his own hands, — wished to keep Bolingbroke under subjection as if still only Secretary at War, — and treated his pretensions as presumptuous and preposterous.*

Queen's declining health.

The breach between them was hastened by the declining health of the Queen. From the attacks of illness to which she was subject, and her enfeebled constitution, those who had access to her were aware that her life was very precarious, and could not be long protracted. Who was to rule in her stead? Oxford, although accident had placed him at the head of a Tory government, had Whiggish propensities. While he was a member of the House of Commons, he had himself brought in the act by which the Crown was limited to the house of Hanover; and although he had carried on

* Swift now writes thus to Lord Peterborough: "Our divisions run farther than, perhaps, your Lordship's intelligence has yet informed you of; that is, a triumvirate of our friends I have mentioned to you; I have told them more than once, upon occasion, that all my hopes of their success depended on their union; that I saw they loved one another, and hoped they would continue it, to remove that scandal of inconstancy ascribed to court friendships. I am not now so secure." *May*, 1711. — So in his Journal to Stella, he says: "I do not much like the posture of things: I always apprehended that any falling out would ruin them, and so I have told them several times." *21st Aug.* 1711. — But he most completely draws aside the curtain in his "*Inquiry into the Queen's last Ministry.*" "There could hardly be a firmer friendship in appearance than what I observed between those three great men who were then chiefly trusted; I mean the Lords Oxford, Bolingbroke, and Harcourt. I remember, in the infancy of their power, being at the table of the first, where they were all met, I could not forbear taking notice of the great affection they have to each other. I did not see how their kindness could be disturbed by competition, since each of them seemed contented with his own district; so that notwithstanding the old maxim which pronounces Court friendships to be of no long duration, I was confident theirs would last as long as their lives. But it seems the inventor of this maxim was a good deal wiser than I, who lived to see this friendship first degenerate into indifference and suspicion, and thence corrupt into the greatest animosity and hatred, contrary to all appearances, and much to the discredit of me and my sagacity."

About the same time, Swift composed "The Faggot," applying to the quarrelling ministers the fable of "the Old Man and the Bundle of Sticks," and deals a hard blow to the Lord Chancellor:

—— "Come, courtiers, every man his stick,
Lord Treasurer, for once be quick;
And that they may the closer cling,
Take your blue ribbon for a string.
Come, *trimming Harcourt*, bring your mace,
And squeeze it in, or quit your place;
Dispatch, or else that rascal Northey[1]
Will undertake to do it for thee."

[1] Northey was Attorney General, and supposed to be a candidate for the Great Seal.

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correspondence with St. Germaine's, and had held out hopes to the supporters of divine right, this was only to soothe the Jacobite party, and he was fully resolved, in his heart, to stand by the Protestant succession. He trusted that his services might be favourably considered by the new family; and, at any rate, he was not without some little regard for religion and liberty. Bolingbroke, utterly unprincipled, saw that for him there was no hope on the accession of the Hanoverian family, as they would either entirely throw themselves into the arms of the Whigs, to whom chiefly they owed their summons to the throne, or, if they favoured any Tory, would prefer him who had assisted the Whigs in bringing about this settlement. He, therefore, devoted himself to the cause of the Pretender. Though, in his public professions, he was furiously High Church, in private he was a scoffer at all religion. He cherished the hope of prevailing on James to follow the example of his ancestor, Henry IV. of France, and, out of policy, to change his creed; but, if this could not be accomplished, he would not have scrupled to try to make the nation conform to the faith of the Sovereign, and he would have set them the example. As to the constitution he was indifferent, for he intended that the prerogatives of the Crown should be exercised by himself.

Harcourt sides with Bolingbroke to bring in King James.

Harcourt, a very different man, engaged in the same enterprise from very different motives. It is impossible to deny that in Queen Anne's reign there might have been conscientious, disinterested, ay, and *enlightened*, Jacobites,—and I reckon this eminent lawyer in the number. Looking to the conduct of James II., and considering what might be expected from his bigoted son, I myself, for the sake of the reformed religion and civil liberty, should have been still for breaking the line of hereditary succession, and placing another family on the throne, notwithstanding all the objections to which this proceeding was liable. But Harcourt reasoned very differently. He questioned, on plausible grounds, the power of parliament to change the succession to the Crown,—urging that by the fundamental law of the monarchy, given by God and assented to by the whole body of the people before parliaments existed, this succession was hereditary, and that

Reasoning of Jacobites at this time.

the Lords and Commons were only summoned to advise the King *de arduis regni*—to carry on the existing constitution — not to subvert it, — which, if the wild notions of liberty prevailing in modern times were to prevail, could only be done by a general convention of the whole people, or by some scheme for ascertaining the opinion of the majority. At all events, he pronounced the resolution of the two Houses to alter the succession, without the consent of the reigning monarch, in point of law, a nullity;—and the Revolution was nothing more. If the misdeeds of James would justify resistance to his authority, and setting him aside for his life, as if he were deprived of reason, — his innocent son might exclaim, "*ubi lapsus? quid feci?*" On grounds of expediency, as well as right, it would be proper to adhere to the ancient line of our kings. The true heir was an Englishman born, and, though unfortunately reared in a foreign land, he spoke our language, and had been bred with a familiar acquaintance with our literature, our laws, and our habits, — ever looking to England as his home, and having nothing to divert his affections from this country when he should have been placed on the throne of his ancestors. He would be ready to consent to all the limitations on the royal authority which had been recently introduced; and, indeed, more had been offered in the reign of Charles II., rather than violate the law of succession by the Exclusion Bill. Religion was a difficulty, but there was great reason to hope for the conformity of the true heir to the Church of England. Having promised securities for Protestantism, why should not he enjoy liberty of conscience as well as his subjects? and where was the justice in saying that he had forfeited the Crown by adhering to the faith of our great law-giver, Edward I., and of the heroes of Cresci, Poictiers, and Agincourt, from whom he was descended? Then regard was to be had to the foreign family to be invited to rule over us. The Princess Sophia, herself an amiable and accomplished Princess, was now in her eightieth year, and her son George, the reigning Elector of Hanover, had nothing but the vulgar virtue of personal courage to recommend him. Though fourteen years had elapsed since the passing of what was called

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the "Act of Settlement," under which he was to claim the Crown, he had not yet paid his future subjects the compliment of learning the first rudiments of their language; he had an utter contempt for all literature and for the fine arts; having shut up his lawful wife in a castle on an unjust suspicion of infidelity, he lived with mistresses, who were to be transferred to this country to squander our money and to corrupt our morals; he himself was deeply involved in petty German politics, from which his mind never could be extricated; to add a few acres to his hereditary dominions, he would be ready lavishly to waste British blood and treasure; utterly ignorant of our constitution and form of governing, he would be a mere puppet in the hands of others, and his accession would be a usurpation of the government by the odious Whig faction, who pretended a love for civil and religious liberty that they might reign in his name. English history proved that the true heir to the throne had always recovered his rights, and as long as a stranger was on the throne there would be a constant succession of conspiracies and rebellions, incompatible with public peace or public prosperity. The royal line of James II. would be perpetuated by his two grandsons, and, if it were extinct, there were still all the descendants of Henrietta, daughter of Charles I., and there were all the descendants of the elder children of the Queen of Bohemia, descended from James I., before the Princess Sophia of Hanover, or her descendants, could have the slightest colour of claim.

Jacobite publications.

Accordingly, under the secret sanction of Harcourt, various treatises were now published in England to support the imprescriptible claim of the Stuarts to the Crown, and the invalidity of the Act of Settlement. One of these which had been composed, it was believed, from materials furnished by him, and which had been advertised in the London Gazette, advocated, in the boldest and most explicit terms, the cause of the Pretender; and when the indignation of the Whigs, and the clamour of the press, had compelled the commencement of a prosecution against the publisher, this was rendered abortive by the interference of the government in remitting the sentence.*

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Queen's inclination in favour of her brother.

There is no direct evidence to show how far the Queen concurred in these views. She would not listen to the proposal that her brother should come to England, on an understanding that she should sit upon the throne during her life, and that he should succeed her; but there seems no reason to doubt that, entertaining the greatest abhorrence of the Hanoverian family, she would have been pleased with any plans to ensure his succession which were consistent with the continuance of her own rule. In answer to an address from the Lords, who were alarmed by the aspect of affairs, and prayed that she would issue a proclamation against the Pretender, — by Harcourt's advice, and with the strong approbation of Bolingbroke, — against the remonstrances of Oxford — she said, "I do not at this time see any occasion for such a proclamation: Whenever I judge it to be necessary, I shall give my orders for having one issued."† She likewise agreed to the new modelling of the army by the dismissal of a great many Whig officers — a measure which she was perhaps told was only for the safety of the church — but which Bolingbroke and Harcourt certainly recommended for the purpose of defeating the Hanoverian succession.‡ They made another attempt, which might have been much more effectual — by imploring the Pretender to change, or dissemble, his religion; but James, who is to be praised at least for his sincerity, wrote an answer solemnly declaring that "he would neither change nor dissemble his own religion, but that he would show indulgence to the religious errors of his subjects;" and this was injudiciously made public by some of his partizans, in the vain hope of assisting him by raising his character for honesty.§ But, upon the whole, things looked so favourably for the Stuart family, and such confidence was

April 12. 1714.

Sincerity and imprudence of the Pretender.

* Letter to Bothmar, 25th May, 1714; Political State, vii. 488.

† 7 Parl. Hist. 1340.

‡ Macpherson's Pap. ii. 412.; Com. Jour. xvii. 293.

§ At this time Bolingbroke in a great rage declared to Iberville, that "if the Elector of Hanover ever did mount the throne of England, it would be entirely through the fault of the Pretender in refusing to do what was quite indispensable to gain the hearts and to allay the apprehensions of the nation;" and several leading Catholics concurred in the same advice, saying that "the delay of his conformity at this dangerous crisis of the Queen's health they thought could only arise from his requiring assurances that on taking that step he would be acknowledged as heir."— *Letters of Iberville to Torcy*, June and July, 1714.

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reposed by their party in the Lord Chancellor, that a bill was filed in the Court of Chancery by Mary of Modena, claiming arrears of her dowry to the amount of 650,000*l.* An objection being made that she styled herself "Queen Mother," he was obliged to order it to be taken off the file — but having reformed her title to "the Most illustrious Princess Maria, relict of James II. King of England," it was received, and although no formal decree was pronounced upon it, a sum of 50,000*l.* was remitted to France for her use.

Writ demanded for the electoral Prince of Hanover as Duke of Cambridge.

The friends of the Protestant succession were not inactive, and they now recommended a move for which the Chancellor was little prepared. In the year 1706, a patent had passed the Great Seal creating the electoral Prince of Hanover, afterwards George II., an English Peer, by the title of "Duke of Cambridge," but no writ of summons had ever been issued to him, and there was no apprehension that such a thing would ever be proposed, as the Whigs themselves, when in office, out of tenderness to the feelings of the Queen, had resisted the application that a member of the electoral family should be invited to reside in England. But having been naturalized by act of parliament — *de jure*, he was entitled to a writ as much as any other peer, and it was thought that his presence would not only embarrass the ministers, but in case of a demise of the Crown might essentially further the accession of his family. On the 10th of April the Whig Lords held a consultation at Lord Halifax's, to which Baron Schutz, envoy from Hanover, was admitted, and it was resolved that, without any address to the Crown, or parliamentary discussion, and without any previous notice, the writ should be demanded as a mere matter of course from the Lord Chancellor, whose official duty it was to have issued it under the Great Seal. Accordingly Baron Schutz, as the agent of the Duke, paid a visit to the Lord Chancellor, and, after the ceremony of salutation had passed in due form, and they were both seated, the following amusing dialogue was held between them.—*B. S.* "I wait upon your Lordship to acknowledge, in the name of the Elector, my master, the affection your Lordship has shown on various occasions to the most serene Electoral House of Hanover."—*L. C.* "I am extremely sensible of the honour which your Excellency does

me by this visit, and this compliment, and I beg you will assure his most Serene Highness, the Elector, of my entire devotion to his service, and I hope his most Serene Highness gives no credit to the false reports which are industriously spread abroad in order to excite jealousies in the mind of his most Serene Highness against myself and others of her Majesty's present Ministers."—*B. S.* "My Lord, I shall not fail to discharge such an agreeable commission. But, in the mean time, I have a small favour to ask from your Lordship on behalf of the Electoral Prince — that your Lordship would be pleased to make a writ for his sitting in the House of Peers as Duke of Cambridge." — *L. C.* (*much astonished, puzzled, and perplexed.*) "It is not usual to make out writs for Peers who are out of the kingdom. However, I will forthwith apply to her Majesty for directions in this case."—*B. S.* "I doubt not that your Lordship will duly perform what you know to be the duty of your office. But I can relieve your Lordship from all difficulty on the score of the Duke of Cambridge being out of the kingdom, for I can assure your Lordship that his Electoral Highness will come over very speedily, and he may probably have landed before the writ is made out. And now, my Lord, I respectfully take my leave of your Lordship."—*L. C.* (*in some confusion and trepidation, and perhaps recollecting that this scene might be the foundation of a future impeachment.*) "Your Excellency will be pleased to remember that I do not refuse your demand, but only think it proper to acquaint the Queen, my Mistress, with it—which I will forthwith do."—*B. S.* "Your Lordship will also be pleased to remember that I, by the authority and in the name of the Duke of Cambridge, do demand that a writ of summons may be made out to him to sit in this present parliament according to the rights and privileges of the peerage of England."

The Chancellor immediately called a Cabinet Council, which sat on this subject from 9 o'clock till midnight, and then resolved "that a writ should be made out for the Duke of Cambridge." Bolingbroke was convinced, although with great difficulty, that the Lords would immediately take up the refusal of the writ as a breach of privilege, and that the nation would be on their side. Next day the Hanoverian

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Minister addressed the following letter to the Lord Chancellor:—

"My Lord,

"I hope your Lord^p will be pleased to send me an answer concerning what I had the honour to entertain you with yesterday, that I may this evening acquaint the Princess Sophia with the same by my letters.

"I am, with great respect,
"My Lord,
"Your Lord^ps most obed^t
"humble Serv^t
"GSYR SCHUTZ.

"London, the $\frac{13}{24}$ April, 1714,
in the afternoon."

Without again consulting his colleagues, the Chancellor returned an answer in the spirit of the resolution which the government had adopted.

"13th April, 1714.

"S^r,

"When you came to me yesterday, and told me that by order of the Princess Sophia you demanded a writ of summons for the Duke of Cambridge, I let you know that I thought it my duty to acquaint her Ma^ty therewith.

"I have accordingly layd this matter before the Queen, who was pleased to say, that not having received the least intimation of this demand from you, or in any other manner whatsoever from the Court of Hanover, she could hardly persuade herself that you acted by direction from thence; that she, therefore, did not think fit to give any other answer than this, that I would do what the law required.

"The writ for the Duke of Cambridge was sealed of course, when the writs of summons to all the other peers were sealed, and lyes ready to be delivered to you whenever you call for it. I am,

"S^r,
"Your most humble Serv^t,
"HARCOURT, C."*

* Lans. MS. Brit. Mus. 1236. fo. 257. 259.

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The statement that the writ had been sealed "of course," the Chancellor considered himself at liberty to make, on the well-known doctrine of his Court, that "Equity considers what ought to be done as actually done." However, it was secretly determined that measures should be taken to counteract this project; that the journey of the Electoral Prince should be delayed; that if the Queen survived, measures should be taken to repeal the act of settlement, and that if she should suddenly die, the Pretender should be proclaimed.* Oxford, at the head of a party called the "Hanoverian Tories," remained true to the Protestant succession; but he was left almost alone in the Cabinet. Mrs. Masham, who had made him Prime Minister, had now conceived a mortal enmity towards him, because he had prevented her from recovering a large sum of money from the Assiento contract. As a consequence, she warmly sided with Bolingbroke and Harcourt, and took up the cause of James III.† We likewise find from the Memoirs of the Marshal Berwick, that the Court of St. Germaine's, through the channel of the Duke of Ormond and of Lady Masham, had intimated to the Queen a wish that the Lord Treasurer should be removed.‡

Harcourt summoned from the country by Bolingbroke.

The Chancellor having, on the 9th of July, the last time Queen Anne was ever seen in public, prorogued parliament by her command, retired into the country to enjoy a short repose after the labours of a protracted session; but he was immediately summoned to town by Bolingbroke, who was impatient to break up the existing Cabinet, and added the

* Anne's real sentiments on this subject may be gathered from the narrative of Lockhart, of Carnwath, a zealous Jacobite, of his presenting to her a "high monarchical" or Jacobitish address from the county of Edinburgh. Being told by the Queen that 'she did not doubt his affection to her person, and that she hoped he would not concur in any design to bring over the Prince of Hanover during her lifetime,' somewhat surprised at this mark of confidence,—"I told her," says he, "that her Majesty might judge from the address I had read, that I should not be acceptable to my constituents if I gave my consent for bringing over any of that family, either now *or at any time hereafter*." "At this," adds Lockhart, "she smiled, and I withdrew; and then she said to the Duke of Hamilton she believed I was an honest man, and a fair dealer."—*Lockh. Corr.* 317.

† "The Lord Chancellor, Lord Bolingbroke, and Lady Masham, openly declared against him, &c."—Swift, *Inquiry into the Behaviour of the Queen's last Ministry.*

‡ Ber. Mem. ii. 133.

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following:—"P. S. Pray, my Lord, be punctual, and bring back with you a more sanguine disposition than you left town with: at least don't fancy that the Queen and all the rest of us are to be the slaves of him who was raised by the favour of the former, and the friendship of the latter."*

Oxford removed, and Bolingbroke commissioned to form a Cabinet.

On the 27th of July came the long expected crisis, when Oxford fell. After a renewal of his personal altercations with his rival, often repeated in the royal presence, and a tumultuous scene, which was continued till two in the morning, Anne summoned up resolution to resume the White Staff, and the whole power of the state was left in the hands of Bolingbroke, with orders to form a new administration.† For a few hours, the cause of the Pretender seemed triumphant. The new Premier, of course, intended that Lord Harcourt should continue to hold the Great Seal as Chancellor. He announced that he would put the Treasury in commission, and retaining the office of Secretary, which at such a juncture was the most important under the Crown, he named for the other departments of the government stanch Jacobites, several of whom showed their sincerity by afterwards going into exile, and openly espousing the falling cause of the Stuarts. In the wantonness of his exultation, he next day gave a grand dinner to the Whig leaders at his house in Golden Square, as if, while determined to rule in the name of James III., he had intended to make overtures to them to assist him in securing the Protestant succession, to which he declared himself a devoted adherent.

Death of Queen Anne.

But his ambitious plans, when seemingly so near their consummation, were for ever blasted by the mortal illness

* Bolingbroke to Harcourt, 19th July, 1714; MSS. of G. G. Vernon Harcourt, Esq., M.P.

† The letters of Erasmus Lewis to Swift give a lively picture of the behaviour of Harcourt and Oxford to each other just before the breaking up of the Cabinet.—*July* 17. 1714. "The great Attorney (Harcourt), who made you the sham offer of the Yorkshire living, had a long conference with the Dragon (Oxford) on Thursday, kissed him at parting, and cursed him at heart."—*July* 22. "They eat and drink and walk together, as if there were no sort of disagreement; and when they part I hear they give one another such names as nobody but ministers of state could hear without cutting throats."—*July* 24. ——"intelligence that the Dragon has broke out in a fiery passion with my Lord Chancellor, sworn a thousand oaths he would be revenged, &c."

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of the Queen, which she ascribed to her agitation on the night she vested all power in his hands. While she lay in a state of stupor, the friends of the Protestant succession seized the government; she was made to go through the form of appointing Shrewsbury Lord Treasurer, and as soon as she expired George was peaceably proclaimed King.

# CHAPTER CXX.

## CONCLUSION OF THE LIFE OF LORD HARCOURT.

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Harcourt a Lord of the Regency.

Harcourt had been deliberating with the other ministers of Anne, when Somerset and Argyle burst into the council chamber. If these two noblemen had been committed to the Tower, if a messenger had been immediately despatched to Loraine for the Pretender, and if the Duke of Marlborough, who had just then landed from the Continent, and who personally bore no good will to the Elector, could by immense offers have been gained over, — the Stuart dynasty might have remained on the throne. But Bolingbroke, Harcourt, and the Jacobites, were stunned and bewildered by the sudden blow; they did not make the slightest effort to resist the measures of the Whigs, and they seem all to have fallen into passive despair, except Atterbury, who, when his offer that he would head the procession to proclaim James at Charing Cross was rejected, exclaimed, "The best cause in Europe is lost for want of spirit."

However, I think all reasonable men, — even those who concurred in Harcourt's political principles, must approve, in point of policy, of the course which he now adopted. The Jacobites were considerably outnumbered in the Council, and there was reason to believe that, from the prevalent horror of popery, the great majority of the officers in the army and navy, and the majority of the population of the country, would have declared for the Protestant line. To resist the Act of Settlement would have been another revolution — which, for the sake of the cause and of those who were to be engaged in it, was not to be attempted under circumstances which afforded no reasonable hope of success.

In reality, Harcourt acted as if he had never in any degree plotted against or disapproved the change of dynasty. At the meeting of the Council, which took place as soon as the Queen had breathed her last, he produced the sealed paper

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which had been deposited with him as Lord Chancellor, containing the names of those appointed Lords Justices by George on his mother's death. Being himself under the Act of Regency officially a Lord Justice, he immediately took the oath of allegiance to the new Sovereign, together with the oath of abjuration of James, which he had so strenuously opposed, and he administered these oaths to his brother Lords Justices, as well such who were official, as those who had been personally nominated. They then all signed the formal recognition of the title of the new Sovereign, and ordered the Heralds to proclaim "that the high and mighty Prince George, Elector of Brunswick Lunenburgh, is, by the death of Queen Anne of blessed memory, become our lawful and rightful liege Lord, King of Great Britain, France, and Ireland, Defender of the Faith."

George I. proclaimed.

Lord Harcourt's authority as Chancellor under his appointment by Queen Anne was gone, but he was reappointed by the Lords of the Regency, in the name of the new Sovereign, and was again sworn in.*

Harcourt reappointed Chancellor.

The House of Lords having assembled in pursuance of the Act requiring parliament to meet immediately on the demise of the Crown, the Chancellor hastened to the woolsack, and, to give time for taking the oaths to the government, moved an adjournment till the 5th of August. On that day, the Commons being summoned to the bar, the Chancellor, in the name of the Lords Justices, now invested with royal authority, thus spoke: "My Lords and Gentlemen, it having pleased Almighty God to take to himself our late most gracious Queen of blessed memory, we hope that nothing has been omitted which might contribute to the safety of these realms, and the preservation of our religion, laws, and liberties, in this great conjuncture. As these invaluable

Harcourt's speech as Lord Justice to the two Houses.

* "Anno Primo Georgii Regis, 3d August, 1714.—Simon Ld Harcourt, Lord High Chancellor of Great Britain, went afterwards (*i. e.* swearing of the Ld Chief Justice Parker, the Attorney and Solicitor General, etc.) into Court at his house aforesaid (Lincoln's Inn Fields), attended by the Mar of the Rolls, some of the Masters in Chancery, Six Clerks Registers, and his Lordship's officers and servants, and there took the oaths appointed to be taken by the Act primo Willi. et Marie, and the oath of Chancellor; the oath being read by the Deputy Clerk of the Crown, the Master of the Rolls holding the book."—*Min. Roll.* 1714.

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blessings have been secured to us by those acts of parliament which have settled the succession of the Crown in the most illustrious House of Hanover, we have regulated our proceedings by the rules therein prescribed." After stating the constitution of the new government by the Lords Justices under the Regency Act, he proceeds, "We are persuaded you will bring with you so hearty a disposition for his Majesty's service and the public good, that we cannot doubt of your assistance in every thing which may promote those great ends." Having asked supplies from the Commons, he thus concluded, "My Lords and Gentlemen, we forbear laying before you any thing which does not require your immediate consideration, not having received his Majesty's pleasure; we shall therefore only exhort you, with the greatest earnestness, to a perfect unanimity and a firm adherence to our Sovereign's interest, as being the only means to continue among us our present happy tranquillity."

Prorogation.

On the 13th Lord Harcourt made another speech as the organ of the Lords Justices to both Houses, announcing his Majesty's approach "to employ his utmost care for putting these kingdoms into a happy and flourishing condition." On the 21st of August the Speaker of the House of Commons having delivered a long address to the Lords Justices when presenting a money bill for the royal assent, Lord Harcourt in their name made a suitable reply, thus concluding—"You may be assured that the unanimity, the cheerfulness, and the despatch with which you have proceeded in granting these aids, will render them yet more acceptable to his Majesty, and you may depend upon our making a faithful report thereof to him." A few days after he put an end to the session by a prorogation.*

Bolingbroke was eager to enter the service of the new King. Whether if an offer of the Great Seal had been made to Lord Harcourt it would have been accepted I cannot possitively say; but my opinion is, that it would without hesitation have been rejected. He was still devotedly at-

* 7 Parl. Hist. 3—11.

tached to the exiled family, and there was a movement going on in Scotland with a manifestation of favourable sympathies in the south which might have led to their restoration. He never would voluntarily have accepted office with the intention of betraying his employer.

Sept. 18. Harcourt ill received by Geo. I., and deprived of Great Seal.

But he was not exposed to any temptation, for George on his arrival declared for an exclusively Whig cabinet, and treated the Chancellor with particular neglect, and even rudeness — on account of the rumours which had got abroad of his machinations at the end of the late reign to bring in the Pretender. When the new King landed at Greenwich, Harcourt attended with the other Lords Justices to receive him; but while his Majesty loaded the two Ex-chancellors, Somers and Cowper, with civilities, he would not even speak to the present Lord Chancellor, who had exercised the royal authority in his name. In three days, his Majesty, without having admitted him to an audience, took the Great Seal from him by Townshend the new Secretary of State, who was fortified by a warrant under the sign-manual to demand it, and exercised his authority very offensively. Sept. 21.

It seems rather surprising that when bills of attainder were passed against Bolingbroke and Ormond, — and Oxford, who had always supported the Protestant succession, was impeached for high treason, — Lord Harcourt was allowed to remain unmolested, although it was well known that, being a Jacobite in principle, he had done every thing in his power to obstruct the King's accession, and that, "biding his time," as soon as a favourable opportunity arose he would be ready to risk every thing for the Stuarts. But he had spoken and acted with much more caution than Bolingbroke — so that there might have been great difficulty in adducing any evidence against him, and from his courteous manners and the prevalent opinion of his honesty, there was a general wish to treat him with lenience.

Lord Harcourt in his retirement.

For the first three years of the new reign, Harcourt did not openly take any part in politics. He professed to have withdrawn from public life. Of his two most distinguished colleagues one was a prisoner in the Tower of London, and the other having fled, and being attainted, was openly in the

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service of the Pretender. He himself, while the cause was sperate, retained his former principles and wishes with respect to the Crown; but no opportunity occurred for his interfering actively, with any prospect of advantage, to displace the family who he considered had usurped it. He remained in a state of extreme excitement and suspense during the rebellion in the north. When the news reached London, of the fight at Sheriffmuir, and James's arrival at Scone, he was for a short time much elated, and amidst his family he sang, "The King shall have his own again;" but still the English Jacobites, when sounded, were adverse to any open manifestation, till it should be justified by more decisive successes; and ere long the Earl of Mar and the Prince were obliged to fly from Scotland, Preston was taken, and the heads of the rebel Lords were stuck over Temple Bar. The Ex-chancellor, though a tolerably steady politician, was not an enthusiast, and when he looked up as he passed into the city, did not wistfully exclaim:

"Forsitan et nostrum — miscebitur istis." *

The government had a keen eye upon him during these transactions, but he was not committed to the Tower along with Lord Lansdown, Sir William Wyndham, and other suspected adherents of the Stuarts, and he had acted so cautiously that no evidence could be discovered to justify any proceedings against him. Nevertheless, when the act of grace passed, he was expressly excluded from it.†

His devotion to literature.

He professed to dedicate himself entirely to literature, and he was much in the society of literary men. Now, indeed, he had great reason to rejoice that he had continued to mix elegant pursuits with business, and that he had not been "a mere lawyer." He found constant agreeable occupation in reading and in conversing with men of genius. Swift had gone to his Deanery of St. Patrick's, but the Ex-chancellor assisted in forming the celebrated Quincunx, and improving the

* See Bosw. Johnson, ii. 243.

† In spite of this and several other exceptions, a contemporary pamphlet carries its adulation to such a pitch of blasphemy as to say that "the clemency of King George was not only great, but even extended farther than that of God himself." — *Tindal*, vii. 160. *contra*, *Lock. Mem.* ii. 5.

grotto at Twickenham. He himself was a worshipper of the Muses, and was not despised by them. His productions were chiefly *vers de société*,—but we have one poetical effusion of his, of which I am rather proud, for the honour of the Great Seal. When Pope published a collection of his works, Harcourt, according to the fashion of the time, supplied an encomiastic poem, to be prefixed to the volume, along with Sheffield, Duke of Buckingham, Parnell, Wycherley, and Lord Lyttleton, and the lawyer's lines will bear a comparison with those of the more elaborate Pieces, or the professed Poets: *

Poetical address by him to Pope.

"He comes! he comes! bid every bard prepare
The song of triumph and attend his car.
Great Sheffield's Muse the long procession heads,
And throws a lustre o'er the pomp she leads;
First gives the palm she fir'd him to obtain,
Crowns his gay brow, and shows him how to reign.
Thus young Alcides by old Chiron taught,
Was form'd for all the miracles he wrought:
Thus Chiron did the youth he taught applaud,
Pleas'd to behold the earnest of a god.
But hark! what shouts, what gathering crowds rejoice!
Unstain'd their praise by any venal voice,
Such as the ambitious vainly think their due,
When prostitutes or needy flatterers sue,
And see the chief! before him laurels borne;
Trophies from undeserving temples torn;
Here Rage, enchain'd, reluctant raves, and there
Pale Envy, dumb and sickening with despair;
Prone to the earth she bends her loathing eye,
Weak to support the blaze of majesty.—
But what are they that turn the sacred page?
Three lovely virgins, and of equal age!
Intent they read, and all enamour'd seem,
As he that met his likeness in the stream:
The Graces these; and see how they contend,
Who most shall praise, who best shall recommend.
"The chariot now the painful steep ascends,
The pæans cease, thy glorious labour ends.
Here fix'd, the bright eternal temple stands,
Its prospect an unbounded view commands:
Say, wondrous youth, what column wilt thou choose,
What laurell'd arch for thy triumphant muse?
Though each great ancient court thee to his shrine,
Though every laurel through the dome be thine,
(From the proud epic, down to those that shade
The gentler brow of the soft Lesbian maid,)
Go to the good and just, an awful train,
Thy soul's delight and glory of the fane;
While through the earth thy dear remembrance flies,
'Sweet to the world, and grateful to the skies.'"

* To Mr. Pope, on the publishing his works.

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He defeats the impeachment against the Earl of Oxford.

The first occasion of Lord Harcourt again appearing upon the political stage was in the year 1717, when by his management an end was put to the long-depending impeachment of the Earl of Oxford, and that nobleman was restored to liberty. It happened that at this time Walpole was out of office and disposed to show to the Court his powers of annoyance. It is very rare that two leaders are in opposition to a government, however different their past course and principles may have been, without a mutual good understanding, if not a coalition, being speedily established between them. Walpole had assisted in instituting the prosecution against the author of the peace of Utrecht, but out of spite to Stanhope, and those on whom the conduct of it now devolved, he wished that it should be terminated with some disgrace to the accusers. Among the articles of impeachment there were several of the character of "high crimes and misdemeanours" (such as secret orders given to generals and negotiators), for which there was some foundation; but there were others for alleged "high treason," which were entirely false or frivolous. Seeing the chance of bringing about a quarrel between the two Houses, which would be annoying and discreditable to the administration, he advised Harcourt to try to make the Lords irritate the Commons by the mode of fixing the trial, and when the trial came on, to move that no evidence be received upon the articles charging *misdemeanour* till those charging *treason* should be disposed of. Thereupon Lord Harcourt, supported by Lord Trevor, got a committee appointed to search for precedents as to the mode of conducting the trial of impeachments, and, the report being that it was the undoubted privilege of the Lords to fix a day for the trial at their discretion, the 24th of June was peremptorily fixed for the commencement of the trial of the Earl of Oxford. On that day when the managers for the Commons had opened and were beginning to prove the first article, Lord Harcourt moved the adjournment of the Lords from Westminster Hall to their own chamber, and after a long speech to show the cruel manner in which the prosecution had been conducted, "urging that it would be a great hardship upon a Peer who had already undergone so long a confinement, to stand every day at their bar like a

traitor, and be at last found guilty only of high crimes and misdemeanours, or entirely absolved," he proposed the resolution "that the Commons be not permitted to proceed on the articles for high crimes and misdemeanours till judgment be first given upon the articles for high treason." I have already narrated in the Life of Lord Cowper how the expected quarrel which arose between the two Houses speedily produced the desired acquittal.* Lord Harcourt conducted the conferences on the subject, and wrote the reasons on the part of the Lords,—still communicating with the wary Walpole in every stage. This affair established an intimacy between them which by-and-by, when Sir Robert was Prime Minister, induced him who had been such a determined opponent of the Protestant succession, *sincerely* to "abjure" King James, and to send in his adhesion to King George.

Origin of his connection with Walpole.

But for several years longer he continued a bitter enemy of the government, and did all in his power to disgust the nation with Hanoverian rule. Thus, in the debate on the "Mutiny Bill" in 1718, he made a very factious speech against standing armies and courts-martial, and in "South Sea Year" he attempted to prove that all the follies, frauds, and sufferings of the nation were to be imputed to the government.

Lord Harcourt continued to attend diligently in parliament, and to take an active part, in disposing of the judicial business of the House of Lords.†

His conversion did not take place till the summer of 1721,

* Ante, p. 368.

† There now lies before me the original of a letter written to him by Sir Richard Levinz, an Irish Judge, from Dublin, showing that his voice was considered potential in the decision of appeals and writs of error, and that canvassing the Lords in such matters was not considered at all indecent:—"My very good Lord,—Mr. Thomas Acton, who is chirographer of the Court of Common Pleas here, has a cause depending before your Lordship upon an appeal from the Chancery here, and has desired me to write to your Lordship. I was very unwilling to give your Lordship this trouble, and told him that if he had justice on his side he might be assured of a full measure of it from your Lordship; and if that were wanting, nothing could supply the defect. But he being very importunate, and known to me to be a very honest man and a good officer in the court in which I sit, and it being the custom here with great diligence to seek for letters from persons to such of the Lords as they have the honour to be known to, I hoped your Lordship would not take it ill if I took this opportunity of expressing the great respect I have ever had for your Lordship, and desiring the favour of your Lordship to be present at the hearing this gentleman's cause."—16*th Jan.* 172½.

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when, on the deaths of Stanhope and Sunderland, Walpole being undisputed Prime Minister, began an administration the longest and most prosperous of the 18th century. It was a great object with him to gain over a Jacobite leader. Bolingbroke, dismissed from the service of the Pretender, now importunately offered to support the government on having his attainder reversed, and being allowed to resume his seat in the House of Lords. Walpole did not much doubt the sincerity of his purpose to change sides, but dreaded his ambition and his talents, and foresaw that he would soon struggle to be Prime Minister to King George. He therefore sounded the Ex-chancellor with whom he had kept up a private intimacy since Oxford's acquittal, and who, enjoying a fair reputation, was less aspiring and more trustworthy.*

His conversion to the House of Hanover.

Apology for his conduct.

Harcourt is generally considered as having forfeited his character by listening to the overtures made to him, but I think without sufficient reason. The government *de facto* established, was supported by a vast majority of the English nation, and notwithstanding plots entered into by some few from principle, and by others from the hope of personal advantage, there was no reasonable chance of overturning it. The conduct of the true heir had been so excessively indiscreet, and he seemed so impenetrable to all good advice, that there appeared an absolute impossibility of serving him effectually, and any attempt to restore him was only likely to lead to the wanton shedding of blood and the utter ruin of the families of those who might engage in it. I therefore can see no culpable inconsistency in a man who in the reign of Queen Anne, strove to prevent the succession of the Hanoverian family, and upon her death continued to oppose them till the opinion of the people should be manifested on the grand question, afterwards, for the sake of the national tranquillity and prosperity, agreeing to support them. I must allow that he might have shown better taste in his mode of going over, and that he ought to have avoided the suspicion of mercenary motives by rejecting all favours

* About this time there was a suspicion of other Jacobites going over. Prior writes to Swift: "The Bishop (Atterbury) cannot be lower in the opinion of men than he is, and I wish our friend Harcourt were higher than *he* is."—*April*, 1721.

that might be proffered to him by the Court; but to give weight to his adhesion, and to prove that he could never *resile*, he agreed to accept of an increase of his pension as Ex-chancellor, with a rise in the peerage to the degree of a Viscount. In the following year he was sworn of the Privy Council, and thenceforth attended when any judicial business was before the Board. However, unlike Murray of Broughton, who justly incurred eternal infamy by his treacherous change of sides in 1745, he never betrayed any confidence that had been reposed in him, and he was always pleased to do a good-natured turn for an old Jacobite friend. Notwithstanding strong solicitations and temptations, he ever after remained true to the new engagements into which he had entered. Atterbury's plot, which might have proved very formidable, soon afterwards arose, but he refused to be concerned in it, though united to the Bishop by the closest ties of private friendship.

July 24. 1721.

Aug. 25. 1722.

When the bill of pains and penalties against Atterbury was brought in, the opposition Peers wished to carry a resolution in the House of Lords that he should be forbidden to appear to plead against it at the bar of the House of Commons. This Lord Harcourt opposed,—alleging "that in such a proceeding the Commons did not act as a court of judicature, but as a part of the legislature, and that they had as much right to decide as the Lords themselves." So far he was surely right, although Lord Cowper, with a view to defeat the measure by any means, took the other side. When the bill came up to the House of Lords, I could wish for Lord Harcourt's fame that he had actively opposed it. However, he did not vote for it—taking care to be absent when it passed through its several stages there.* In the debate on the third reading, a sarcasm was levelled against him by Duke Wharton, who said,—"There is a noble and learned member of this House who made the greatest figure in opposing the bill for the attainder of Sir John

8 P. H. 210.

His conduct on the bill for the banishment of Atterbury.

* As the Lords' Journals daily give the names of all the peers present, the absence of a peer on any particular day can be proved satisfactorily. The Journals of the Commons now show the names of the members in every division (an improvement not adopted by the Lords), but do not mention the names of members present without dividing.

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Fenwick. I am sorry that I do not see him in his place, as we should no doubt have his assistance to defeat a bill equally obnoxious." *

He assists in obtaining a qualified pardon for Bolingbroke.

We next find Lord Harcourt exerting himself for his old colleague, Bolingbroke, who had sent over his second wife, the Marquise de Villette, to solicit his restoration. The Ex-chancellor finding that he himself could make no impresssion upon Walpole, introduced her to the Duchess of Kendal, who for a bribe of 11,000*l.* promised that the favour should be granted, and he afterwards supported the granting of a free pardon when that step was proposed by the King at a council where he was present. Walpole still strongly opposed any concession, concealing his apprehensions for his own supremacy, but contending that such a restless and faithless man, if replaced in parliament, would poison the minds of the people, and soon alienate them from the happy establishment to which they were at present so much attached. Harcourt proposed a middle course which was adopted, that Bolingbroke should be restored in blood, so that he might live unmolested in England, and enjoy his property, but that all the other civil disqualifications of his attainder should still continue. Walpole would sooner have resigned than agreed to more,—certain that Bolingbroke's eloquence in the senate would soon have been fatal to the existing administration, and might have disturbed the public tranquillity. † Bolingbroke was sensible that more could not then be accomplished for him, and soon after his restoration, being about to revisit the Continent to settle his affairs there, thus addressed Lord Harcourt:—"If by any accident your return should be deferred, I must beg leave to wait on you in the country, or desire you to give me a meeting, where it may be least inconvenient to your Lordship, on the road, for I cannot think of leaving England without embracing the person to whom I owe the obligation of having seen it once more." †

* Parl. Register, 1723, p. 380.

† Letter, Bolingbroke to Harcourt, 26th January, 1723, concluding thus: "I am, and shall be in all circumstances of life, and in all the countries of the world, "My Lord,

"Your most faithful and obedient Servant,

"Bolingbroke."

However, Bolingbroke felt more and more deeply the privation he suffered

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He supports the government till the death of George I.

During the remainder of this reign Harcourt continued steadily to support the Government. He was not put into office, but an honorary mark of distinction was conferred upon him, to testify reciprocal confidence and good will. George, having obtained a repeal of the clause in the Act of Settlement which forbad him to leave the realm without the consent of the two Houses of Parliament, was in the yearly habit of spending some months in Hanover, and after his quarrel with his son, whom he at first appointed Guardian of the Kingdom in his absence, he always named Lords Justices to exercise the royal authority in his name and under his directions. Lord Harcourt, from 1723, was one of these, and he was actually a representative of royalty, in June, 1727, when King George expired, on his journey to Hanover, between Ippburen and Osnabruck. June 3.

June 14. Accession of Geo. II.

When the news arrived in London, Harcourt repaired to Leicester House, was present at the first council of George II., and took the oaths of allegiance to that sovereign. He attended in the House of Lords on the 27th of June, when the King made his first speech from the throne, and thence regularly till the 17th of July, when parliament was prorogued.

But his own end approached. His constitution had been much enfeebled by the fatigues of business and by convivial indulgence, so common in that age. As he was travelling in his coach, on Sunday the 23d of July, to visit Sir Robert Walpole at Chelsea, he was seized with a violent fit of paralysis, and was immediately carried home to his house in Cavendish Square. He rallied so far as par-

from being disqualified to sit in parliament; and, in a letter to Lord Harcourt, dated, Dawley Farm, 22d March, 1725, strongly urges his complete pardon, and denies the report that he had been caballing with Pulteney against the government. "I have very much esteem for Mr. Pulteney. I have met with great civility from him, and shall on all occasions behave myself towards him like a man who is obliged to him. But, my Lord, I have no private correspondence or even conversation with him; and whenever I appeal to the King, and beg leave to plead my cause before him, I will take care that his ministers shall not have the least pretence of objection to make to me in any part of my conduct. I will only say upon this occasion, that if I had caballed against them, there would have been other things said than were said, and another turn of opposition given."—MSS. of G. G. Vernon Harcourt, Esq., M.P. Lord Harcourt gave Bolingbroke fair words, but does not seem to have interfered further for him—which he could not have done without breaking with Walpole.

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Death of Lord Harcourt.

tially to recover the use of speech, and to be considered by his physicians out of immediate danger; but a fresh attack supervened on the following Friday, when he expired in the sixty-seventh year of his age. His remains were deposited, with those of his long line of ancestors, in the family cemetery at Stanton-Harcourt*, but no monument was erected to him, and none of his poetical friends contributed a stanza to his memory. He had so lived as not to stand in need of such memorials after death.

His character as a politician.

Upon the whole, I consider him an ornament to the profession of the law. Those who lament that he had not the liberal political principles of Somers and Cowper should make allowance for his Tory descent, and the rigorous high church principles which were early instilled into him. Swift had vainly tried to fix upon him the nickname of "Trimming Harcourt," but this was merely because the lawyer thought the divine went too great lengths in libelling his old friends and patrons—in accusing Marlborough of cowardice and Somers of irreligion. Great allowance must be made for public men who live in revolutionary times; and, till Harcourt's adhesion to the house of Hanover, I know not that any serious objection can be made to his conduct. Others must determine upon the apology I have attempted for the part he took on that occasion.

As a Judge.

Lord Chancellor Brougham says, "Though a respectable lawyer, he is certainly not to be ranked with the Finches, the Parkers, and the Hardwickes." † But, what will generally be more admired than black-letter law, he had a taste for polite literature, and (as I have shown) was himself no contemptible poet. "The Advice to the October Club," written and much read in 1711, was ascribed to him, but, I believe, erroneously; and I am not acquainted with any prose publication which can be certainly traced to him.

His patronage of learning.

Like the most illustrious statesmen of his time on both sides in politics, he was a patron of learning. When he re-

* "There are twenty of *Harcourt's* Barons bold,
Lie buried within that proud chapelle;"

—of which a very interesting account was written by George Simon Earl Harcourt, 1808.

† *Jones* v. *Scott*, 1 Russ. and Mylne, 269.

ceived the Great Seal he waived the contingency of his presentation to the first preferment that should fall vacant in the Queen's gift, that he might get a prebend in the cathedral at Norwich annexed to the mastership of Katherine Hall.*

His patronage of J. Philips, the poet.

He was ever ready to assist men of genius in distress. J. Philips, the author of the "Splendid Shilling," and the poem in praise of "Cider," he liberally patronised while living, and he erected, at his own expence, a monument in Westminster Abbey to his memory, obtaining for it an inscription by Atterbury.†

Both while he was in office, and after his fall, he lived on terms of the greatest intimacy, not only with Pope, but with Gay, Prior, Parnell, Arbuthnot, the Phillips's, and most of the other wits of the time. Addison he occasionally met,

Letter of thanks to Lord Harcourt from Katherine Hall.

* The following Epistle of Thanks from Kath. Hall to the Lord Harcourt, upon the Grant of this Prebend to their Mastership, was drawn up by Dr. Sherlock, Dean of Chichester, and Mr of Kath. Hall.

"Honbl{l} Viro, &c.

"Magister et Socii Aul. Cath. &c. Salutem.

"Ne quos honesta et literata Paupertas in Clientelam tibi commendaverit, eos mens ingrata, et Beneficiorum immemor indignos arguat, liceat nobis, quales possumus, Gratias agere; quas non tam honoris tui (cui nihil accedere potest), quam officii nostri (cui nihil deesse volumus) Ratio postulat.

"Cum ab Incunabilis Collegii, per multos retro annos, Artes liberales apud nos haud liberaliter acceptæ fuerint, et *Benevolentiâ* potius *Amicorum*, quam *munificentiâ Patronorum* recreatæ floruerint, Tibi debent, Vir amplissime, quod in Spem jam veniant lautissimam, et meliorem sibi sortem promittere audeant. *Mater nostra Catherina*, Prole suâ felix, multos nunc et olim sibi vendicat, summis Ecclesiæ et Reipublicæ honoribus ornatos, viros omni Laudum genere florentissimos, et *Matre Virgine Filios non indignos*; quorum Pietati cum multum se debere sentiat, profitetur tamen se neminem magis suum genuisse, quam Te invenisse; qui ea Beneficia contuleris, ut non modo *Paupertatem* detraxisse, sed etiam *Dignitatem* auxisse videaris.

"Cum ea sit Academicorum laudabilis consuetudo, ut Benefactorum memoriam publicis consignent Tabulis, et Posteris tradant (iniquum enim judicant Tempore et Die memoriam Beneficii definire), inclytum *Baronio Harcourt de Stanton* nomen in *Fastos Collegii nostri* relatum, et per omnes annos celebratum, nobis certe gloriosum erit, et Genti tuæ (speramus) non indecorum: quo enim melior quisq. et honoratior est, eo majoris hujusmodi Patronatûs Jura æstimare, et plurima habere soleat: et officii nostri esse ducimus, cum omne tua in Reginam, in Rempublicam, in Ecclesiam merita norint et intellexerint, quid de nobis merueris, ne nemo nostrum nesciat, providere.

"Quod unum superest, Tibi omnia læta et prospera precamur; et cum eâ sis virtute atq. indole, ut vitam agere, et Bene agere unum idemque sit, Deum Opt. Max. oramus et obtestamur, ut diutissime pergas de Patriâ vivendo bene mereri." —*Add. MS.* 5858. p. 395.

† "Simon Harcourt Miles
Viri benè de se, de literis meriti,
Quoad viveret fautor,
Post obitum piè memor
Hoc illi saxum poni voluit."

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Pope's residence at Stanton-Harcourt.

— when there was perfect courtesy, but on account of politics no cordiality between them. Pope and Gay he treated as brothers. The old family mansion at Stanton-Harcourt had been untenanted since the death of Sir Philip in 1688, but a few rooms continued furnished. Of three of these, each thirteen feet square, one above the other in an antique turret, Pope, that he might be sequestrated from the world, took possession in the summer of 1718, and here he devoted himself to the translation of the Iliad. The uppermost retains the name of "Pope's Study," he having with his own hand traced upon a pane of red stained glass, in one of the casements still preserved, the following inscription:—

> "In the year 1718,
> Alexander Pope
> finished here
> the fifth volume of Homer."

Fate of John Hewet and Sarah Drewe.

Lord Harcourt himself then lived at Cockthorpe, a place in Buckinghamshire, at no great distance, — having Gay for his inmate — and they were allowed occasionally to intrude upon the inspired translator — being his only visitors.

It was during one of these visits, that they witnessed the melancholy end of John Hewet and Sarah Drewe, two rustic lovers, of which we have the following account from the pen of Gay, within a few days after:— "They had passed through the various labours of the year together with the greatest satisfaction: if she milked, 'twas his morning and evening care to bring the cows to her hand. It was but last fair that he bought her a present of green silk for her straw hat, and the posy on her silver ring was of his choosing. Their love was the talk of the whole neighbourhood; for scandal never affirmed that they had any other views than the lawful possession of each other in marriage. It was that very morning that they had obtained the consent of her parents, and it was but till the next week that they were to wait to be happy. Perhaps in the intervals of their work they were now talking of their wedding-clothes, and John was suiting several sorts of poppies and field-flowers to her complexion, to choose her a hat for the wedding-day. While they were thus busied, (it was on the last of July, between two and three in the afternoon,) the clouds grew

black, and such a storm of lightning and thunder ensued, that all the labourers made the best of their way to what shelter the trees and hedges afforded. Sarah was frighted, and fell down in a swoon on a heap of barley. John, who never separated from her, sat down by her side, having raked together two or three heaps, the better to secure her from the storm. Immediately there was heard so loud a crack, as if heaven had split asunder. Every one was now solicitous for the safety of his neighbour, and called to one another throughout the field. No answer being returned to those who called to our lovers, they stepped to the place where they lay. They perceived the barley all in a smoke; and then spied this faithful pair, John with one arm about Sarah's neck, and the other held over her, as to screen her from the lightning. They were struck dead, and stiffened in this tender posture. Sarah's left eyebrow was singed, and there appeared a black spot on her breast; her lover was all over black, but not the least signs of life were found in either. Attended by their melancholy companions, they were conveyed to the town, and the next day were interred in Stanton-Harcourt churchyard."

Lord Harcourt, Pope, and Gay, attended the funeral, and the Peer, at the request of the poets, caused a stone to be placed over the grave of the lovers, and a mural tablet to be placed on the outward south wall of Stanton-Harcourt church, with the following inscription: —

"Near this place lie the bodies of
John Hewet and Sarah Drewe,
an industrious young Man
and virtuous Maiden of this Parish,
who being at harvest work
(with several others)
were in one instant killed by Lightning
the last day of July, 1718."

Epitaphs on the lovers killed by lightning.

Pope and Gay, in fulfilment of a promise to Lord Harcourt that they would join in composing a poetical epitaph to be subjoined, proposed to him the following lines:

"When eastern lovers feed the funeral fire,
On the same pile the faithful pair expire;
Here pitying Heaven that virtue mutual found,
And blasted both, that it might neither wound.
Hearts so sincere, th' Almighty saw well pleas'd,
Sent his own lightning, and the victims seiz'd."

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Lord Harcourt candidly confessed that he did not much like this composition, and said the country people would not understand it. "Well," then said Pope, "I will make one with something of scripture in it, and with as little of poetry as Sternhold and Hopkins." He next day produced the lines still to be read, in passing through this country churchyard, which Lord Harcourt allowed were equally distinguished for sublime piety and exquisite poetry — equally calculated to touch the heart of the refined critic, and of the peasant who required assistance to spell them out:

"Think not by rig'rous judgment seiz'd,
 A pair so faithful could expire;
Victims so pure, Heaven saw well pleas'd,
 And snatch'd them in celestial fire.
Live well, and fear no sudden fate;
 When God calls virtue to the grave,
Alike 'tis justice, soon or late,
 Mercy alike to kill or save.
Virtue unmov'd can hear the call,
And face the flash that melts the ball."

Death of Lord Harcourt's Son.

Soon after this Lord Harcourt had the heavy misfortune to lose his only son, a most accomplished and promising young man, who was so much in the confidence of Harley, St. John, and Swift, as to be appointed by them secretary to the famous society of "Brothers," and who was expected himself to turn out a distinguished statesman and wit.* The afflicted father sought to mitigate his grief by recording the virtues of the deceased in an epitaph, but after many efforts he found that his feelings overpowered him when he tried to express them according to the rules of metrical composition. In this extremity he applied to his friend Pope, who having long honoured the father, had formed an acquaintance with the son, and readily undertook the mournful task. The lines as at first proposed were not quite relished, and a correspondence took place with a view to their amendment. Of this,

* The young man not only resembled his father in genius, but very strikingly in looks — a circumstance to which Gay refers in his address to Pope on the completion of the far-famed translation of Homer, in which he supposes all the poet's friends assembled to welcome his return from Greece:

"Harcourt, I see for eloquence renown'd,
 The mouth of justice, oracle of law!
Another Simon is beside him found,
 Another Simon, like as straw to straw."

one letter has been preserved, which proves the critical acumen as well as the paternal tenderness of the Ex-chancellor.

His letter to Pope respecting his son's epitaph.

"December 6. 1722.

"I cannot but suspect myself of being very unreasonable in begging you once more to review the inclosed. Your friendship draws this trouble on you. I may freely own to you, that my tenderness makes me exceeding hard to be satisfied with any thing which can be said on such an unhappy subject. I caused the Latin epitaph to be as often altered before I could approve of it.

"When once your epitaph is set up, there can be no alteration of it; it will remain a perpetual monument of your friendship, and, I assure myself, you will so settle it, that it shall be worthy of you. I doubt whether the word *deny'd*, in the third line, will justly admit of that construction, which it ought to bear (viz.) renounced, deserted, &c. *Deny'd* is capable, in my opinion, of having an ill sense put upon it, as too great uneasiness, or more good nature, than a wise man ought to have. I very well remember you told me you could scarce mend these two lines, and therefore I can scarce expect your forgiveness for my desiring you to reconsider them.

"Harcourt stands dumb, and Pope is forc'd to speak."

I cannot perfectly, at least without further discoursing with you, reconcile myself to the first part of that line; and the word *forc'd* (which was my own, and, I persuade myself, for that reason only submitted to by you) seems to carry too doubtful a construction for an epitaph, which, as I apprehend, ought as easily to be understood as read. I shall acknowledge it as a very particular favour, if at your leisure you will peruse the inclosed, and vary it, if you think it capable of being amended, and let me see you any morning next week. I am, &c."

These suggestions were attended to, and the exquisite epitaph was produced which is now to be read on the monument erected in the church of Stanton-Harcourt to the memory of the son of the Chancellor:

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"To this sad Shrine, whoe'er thou art! draw near,
Here lies the Friend most lov'd, the Son most dear;
Who ne'er knew Joy, but Friendship might divide,
Or gave his Father Grief, but when he died.

"How vain is Reason, Eloquence how weak!
If Pope must tell what Harcourt cannot speak.
Oh! let thy once lov'd Friend inscribe thy Stone,
And, with a Father's sorrows, mix his own!"*

Lord Harcourt was likewise on terms of great intimacy with the celebrated Dr. Mead, who not only took care of his health, but was of great service to him in collecting his library. The following is an original letter from the physician to the Peer:—

"Ormond Street, July 25. 1723.

"My Lord,

"I do myself the honour to acquaint your Lordship that of the books expected from France, the TRACTATUS TRACTATUUM, and one of those that belong to the King of France's collection are come. The TRACTATUS is a fine copy. I have ordered my bookseller to collate it very carefully, and if it proves perfect, I shall purchase it for fourscore guineas, which is the lowest price, and I believe not dear. The book belonging to the French King's collection I shall take, and your Lordship shall not pay for it till the other volumes are sent over, which I hope will be quickly.

"Our friend, my Lord Bolingbroke, was seized yesterday with a violent fit of his ague, and I expect will have another to-morrow, and no more. I have advised him to hasten his journey to Aix, and I believe he will set out in a few days after your Lordship's coming to town. He desired me, with his humble service, to excuse his not writing by this post to your Lordship, upon the account of his indisposition.† I am, always with the greatest respect, &c."

His personal appearance.

I can only gratify any curiosity which may be felt respecting Lord Chancellor Harcourt's personal appearance by

* "This epitaph is principally remarkable for the artful introduction of the name, which is inserted with a peculiar felicity, to which chance must concur with genius, which no man can hope to attain twice, and which cannot be copied but with servile imitation."—JOHNSON.

† It has been supposed that Bolingbroke was shamming illness as a pretence for going abroad—a supposition contradicted by this letter, unless Mead was his accomplice.

the following description of him a few years before his death, from the pen of a contemporary who knew him well: "He is a fair, lusty man; has been handsome; he has so much learning and eloquence, and so sweet a delivery, that he may not improperly be styled a second Cicero; is extremely generous and good-humoured; has been extravagant, but is now grave, and lives within bounds; hard study, and too much fatiguing himself in his business, have both spoiled his eyes and his constitution. He is about sixty years old."*

From the same authority we learn, that if he was not always very strict in the observance of outward religious duties, he was ready to atone for any irregularity into which he might have fallen: "Ld. Chancellor Harcourt, travelling on Sunday through Abingdon in time of divine service, was stopped by the constables, by whom a humble apology was made to his Lordship for doing what they understood to be their duty; in consequence of which, his Lordship ordered his coach to the church-door, and joined in the public worship till the conclusion of it."†

Anecdote respecting his being taken up for Sabbath breaking when Lord Chancellor.

He exercised a splendid hospitality in London, and at his country-house in Buckinghamshire. From his honourable savings he purchased large additions to his hereditary property — among others, the manor of Nuneham-Courtenay, in Oxfordshire, where his successor built and laid out the splendid mansion and park, which became the chief residence of the family.

His marriages.

When a very young man, with little to live upon, he most imprudently contracted a private marriage with the daughter of his father's chaplain, who had nothing but beauty and an unspotted character to recommend her. With her he lived very happily, notwithstanding the pecuniary difficulties with which they had to struggle, and she brought him a son, whose untimely end he had to weep. After her death he married Elizabeth, daughter of Richard Spencer, Esq., of the county of Derby; and being again a widower, he married Elizabeth, daughter of Sir Thomas Vernon, Bart., but he had no issue by either of his two last wives.

* Gent. Mag. vol. lxv. 467.

† Ib.

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His descendants.

He was succeeded in his titles and estates by his grandson who, in the year 1749, was raised to an Earldom. In 1830, the male line of the Chancellor failed by the death of the third Earl without issue, — when the honours of the family became extinct, and the estates came to the venerable Archbishop of York — who is descended from the Chancellor through a female, and, by royal licence, has taken the name of Harcourt in addition to his own distinguished name of Vernon. The heir male of the English Harcourts is George Simon Harcourt, Esq. of Ankerwyke, some-time M. P. for Bucks, descended from Sir Philip Harcourt, the father of the Lord Chancellor, by his second wife, Elizabeth Lee. *

* From the information of my friend Mr. Pulman of the Heralds' College.

# CHAPTER CXXI.

## LIFE OF LORD MACCLESFIELD FROM HIS BIRTH TILL HE RECEIVED THE GREAT SEAL.

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Obscure origin and great ability of Lord Chancellor Macclesfield.

WE next come to a Chancellor, who, instead of "fetching his life and being from men of royal siege," and tracing an illustrious pedigree for a thousand years, was the son of a village lawyer, and could not tell distinctly whether he had a grandfather, but who inherited from nature a most acute and vigorous intellect, who raised himself by unwearied perseverance and a stupendous store of acquired knowledge to the highest offices in the state, who, though precipitated from power by the judgment of his peers, was more unfortunate than criminal, and whose descendants, now flourishing and distinguished in the peerage of England, ought, notwithstanding the sentence pronounced upon him, to be proud of the founder of their house.

It would have been more interesting to have traced his career amidst difficulties and discouragements, than if it had been the easy result of birth and fortune; but unluckily he has suffered more from biographical neglect than even Somers or Cowper, and the materials have perished from which it might have been hoped that tardy justice might still have been done to his memory. Unless when he was actually mixing in public transactions, little can be known of him by this age or by posterity.*

His birth; son of an attorney.

Thomas Parker, afterwards Lord Chief Justice of England, Lord High Chancellor of Great Britain, and Earl of Mac-

* His venerable representative, the present Earl of Macclesfield, in a very kind answer to my inquiries respecting him, says — "I regret extremely that I cannot give you any information as regards the early life of my ancestor, the Lord Chancellor Macclesfield, or after his retirement from public to private life. In the large collection of MS. letters I possess at Shirburn Castle there are very few of his, and I am sorry to add *none* that would be of use to your Lordship for the valuable work you are now publishing. Had it been otherwise, I should with pleasure have forwarded them to you." — *30th April*, 1846.

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clesfield, was born on the 23d of July, 1666 (the "annus mirabilis"), at Leeke, in Staffordshire, where his father carried on the business of an attorney, and by the savings of a long life accumulated a fortune of nearly 100*l*. of annual rent.

At school.

Having been taught to read by his mother, he was put for two or three years to a free grammar school, in the neighbouring town of Newport, in Shropshire. The two cleverest boys there were Tom Parker, and Tom Withers, the son of a shoemaker. They were in the same form, and friends though rivals. The prognostications with respect to the latter were the most favourable, and he displayed such parts and application, that there was an attempt made to send him to the University by a subscription among the neighbouring gentry. This failing, he was bound apprentice to his father, and flourished for many years as a shoemaker; but not observing the maxim "ne sutor ultra crepidam," he kept up his classical learning, quoted Homer and Virgil to his clerical customers, and fell into misfortunes in his old age. It is pleasant to think that the two schoolfellows socially met when the one occupied a stall at Newport, and the other was Lord Chief Justice of England, and that they afterwards renewed their correspondence, when the one having lost all his business was reduced to penury, and the other had been precipitated with disgrace from the highest station a subject can hold in this kingdom.

His schoolfellow Tom Withers, the learned shoemaker.

Placed in his father's office to be bred an attorney.

Young Parker picked up a smattering of Greek and Latin while at school, but he then knew little more than the peasantry among whom he was reared, and never having had any further instruction, he must be considered as in a great measure self-taught. But he had acquired a taste for reading and a habit of steady application, to which all his future greatness must be ascribed. While still a boy he was placed in his father's office, and was articled as a clerk to become himself an attorney. It is said that he displayed from the tenderest years most wonderful diligence and steadiness, and that, not contented with making himself perfect in the routine of his father's business, he read all the books of amusement and instruction on which he could lay his hands —

spending the perquisites which came to him as clerk in the purchase of a little library of his own.

The father about this time removed from Leeke to Newcastle-under-Lyne, and the dutiful son following him, still displayed, we are told, the same attention to business and desire of self-improvement.

His entry at the Inner Temple.

While he was so engaged there is, respecting him in the admission book of the Inner Temple, the following perplexing entry: —

> "Thomas Parker, Gent., sonne and heir apparent of Thomas Parker, of New Castle under Lyme, in the county of Stafford, Gent.
> Admitted 14th February, 1683 [4]."

No explanation can be given of his admission to an Inn of Court when he was only in his eighteenth year, and in the middle of his apprenticeship. It may be conjectured that his father had humoured his ambitious design of being one day a councillor, or that being sent up to do some law business during the term in London, he had got himself admitted without his father's knowledge. However, it is certain that he went on working in his father's office, and that having regularly served his time, he was placed on the roll of attorneys.

He is admitted an attorney.

Practises at Derby.

To prosecute his profession with more advantage he established himself at Derby, a flourishing town, in which a wealthy client of his father had lately settled in trade, and promised to patronise him. Here he prospered beyond his most sanguine hopes, and from his great skill and diligence, in a year or two his business, in point of extent and respectability, was equal to that of any attorney in the county. We know no farther particulars of his history while he remained in this department of the profession, except that his house in Derby was in Bridge Street, at the foot of the bridge next the Three Crowns. We may imagine that, when the assizes came round, he was at first struck with immense awe at beholding the Judges in their scarlet robes, and could scarcely venture to speak to the leaders of the midland circuit on delivering them briefs in the causes which he had entered for trial; that his reverence for these dignitaries gradually dwindled away; that he began sometimes to think he himself could have

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examined witnesses quite as well as the barristers employed by him, and even by making a better speech to the jury have won verdicts which they lost; that he was likewise hurt by the distance at which he was in public kept by all members of the superior grade of the profession, while some of them were intensely civil to him in private; that he thought it hard, having with great labour prepared a case of popular expectation so as to insure victory, another should run away with all the glory; that he measured himself with those who were enjoying high reputation as advocates and had the prospect of being elevated to the bench; that, possessing the self-respect and confidence belonging to real genius, he felt himself superior to them; and that he sickened at the thought of spending the rest of his days in drawing leases, in receiving instructions from country bumpkins to bring foolish actions, in preparing briefs, and in making out bills of fees and disbursements which any discontented client might tax before the master. Whatever his train of feeling or of reasoning might be, he soon resolved that he would quit his position of an attorney for that of a barrister.

Resolves to go to the bar.

Not having been at any public school or university, and having started in life so very early on his own account, he was still quite a young man when he had laid by enough decently to support him for some years to come. Instead of going on to accumulate a large fortune, which was certainly within his reach, he nobly put all to hazard that he might invest himself in the long robe. He is said to have had that presentiment of future greatness which sometimes springs up under very adverse circumstances, and leads to victory over all obstacles. He accordingly renounced his profitable business as an attorney at Derby, and removed to keep his terms as a student of law in the Inner Temple.

Nothing known of his habits while a Templar.

I regret exceedingly that I can find no particulars whatever of the few next years of his life, and I am quite ignorant of the course of study he pursued, and the companions with whom he associated. That he was very diligent, we need not doubt — still mingling professional acquirements with an attention to more liberal pursuits.

Some have supposed that he now studied at the University

of Cambridge; but his name does not appear in any register there, and there seems no reason to believe that he ever saw this seat of learning, except for a few days as a visitor. Yet when he became Lord High Chancellor of Great Britain, his flatterers discovered that he was descended from "Reginald Le Parker," who had accompanied Edward I., when Prince of Wales, to the Holy Land; and that he had gained great academical distinction on the banks of Cam. Thus wrote Eusden, the Poet-laureate — expecting a good sinecure in the Court of Chancery:

Fable of his studying at the University of Cambridge.

> "Prophetic Granta, with a mother's joy,
> Saw greatness omen'd in the manly boy,
> Who mad'st her studies thy belov'd concern,
> Nor could she teach so fast as thou could'st learn.
> Still absent, thee our groves and muses mourn,
> Still sighing echoes the sad sound return;
> And CAM, with tears, supplies his streaming urn."

Fiction of Eusden.

Parker was called to the bar on the 24th day of May, 1691.* And doubtless he began his new career with greater advantages — with a far better chance of getting on, than if he had been the younger son of an Earl, and had gained high distinction at Oxford or Cambridge. Many attorneys and attorneys' clerks, whom he had known on a footing of familiar intimacy, were now desirous of pushing him forward, and from his former experience he was, when consulted, better able to assist them in the conduct of suits than barristers, who, after taking a degree at the University, had merely gone through the usual curriculum at Lincoln's Inn or the Temple. The danger is, that a man who begins with the less liberal department of forensic procedure may not be able to enlarge his mind so as to perform the duties of a great advocate, and that when pleading before a special Jury, or at the bar of the House of Lords, he may dwell earnestly on small and worthless points.

He is called to the bar.

Advantageous start.

* "Interius Templum
Willus Farrer, Arm$^r$
Sob Dne Regine
Thesaurarius ibm. } Parliament tent 24° Die Maij Anno Dñi 1691, &c.

"At this parliament, Mr. Thomas Parker (and others) are called to the Bar, and to be utter Barristers of this Society."

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This may be the reason why, with splendid exceptions, attorneys turned barristers are generally unsuccessful. But it is quite certain that, whatever was Parker's course of study, he acquired a profound and scientific knowledge of the most abstruse branches of the law — that he rendered himself a most accomplished jurist, and that he became a consummate advocate.

His rapid progress at the bar.

His progress at the bar was rapid and steady. Of course he chose the Midland Circuit, and in a few years he was at the head of it. Yet he passed others without exciting envy or ill will, and his brother circuiters acquitting him of making any improper use of the advantages he derived from the early part of his career, candidly ascribed his extraordinary success to his extraordinary merit. He was now designated the "silver-tongued Parker," and the "silver-tongued counsel." It was some time before he had much business in Westminster Hall, but by degrees his circuit fame extended to the metropolis, and he was retained in most of the great causes which came on in the Court of Queen's Bench, sitting either in London or in Middlesex.

Counsel for the defendant in the *Queen* v. *Tutchin*.

He first attracted the attention of the public, as counsel for the defendant in the great case of *Regina* v. *Tutchin*, tried at Guildhall before Lord Holt, November 4, 1704.* This was an Information by the Attorney General against the publisher of a Journal, called the "Observator," for various alleged libels upon the Queen's Ministers, charging them with incapacity and an unskilful management of the navy. Parker, who was throughout life a consistent politician, had strongly attached himself to the Whigs, and had been noticed by Somers, Cowper, and the leaders of that party, as a rising lawyer. Along with Montague, the brother of Lord Halifax, he was now selected to defend their partizan. The alleged libels contained no reflection on the private characters of the Ministers, and the defendant's counsel contended that their public conduct was a fair subject of observation; but to our surprise and mortification, we find that enlightened Judge, Lord Holt, telling the jury they were to consider "whether

* 14 St. Tr. 1095.

the alleged libels did not tend to beget an ill opinion of the administration of the government?" * The defendant was found guilty; but he was saved from punishment by an objection afterwards taken to the regularity of the Jury process. Parker's argument on this question (too technical for the general reader) is most masterly, and by genuine lawyers is perused with enthusiasm.†

He is made Queen's Serjeant and knighted.

His appearance in this case acquired him such *éclat*, that his promotion was considered certain if ever the Whigs should come into office.

June 8. 1705.

There was a partial change in the administration in the following year,—when, taking the degree of the coif, he was made a Queen's Serjeant, and was knighted. He gave rings on this occasion to Queen Anne and Prince George of Denmark, with the complimentary motto, "MORIBUS, ARMIS, LEGIBUS." ‡

Returned to parliament for Derby.

From strong local connection, he had been before appointed Recorder of Derby, and at the general election, which soon followed, he was returned to parliament as member for that borough, along with Lord James Cavendish. We know that he made a most favourable impression on the House, and that he frequently took part in debate, being a terror to the High Church party, and a praise and

* Some have supposed that Holt, who was a decided Whig, was subject to the weakness of a great mind, and that, to avoid the suspicion of partiality, he showed a leaning in favour of the Tory ministers; but I believe that this doctrine was then considered to be law, and it will continue to be occasionally brought out till there is (as there ought to be) a statutable definition of the limits of free discussion.

† The admiration which has been expressed of Parker's argument on the "*Distringas*," reminds me of a saying of my deceased friend DUVAL, the greatest conveyancer of his day, who being asked by me "whether the constant perusal of abstracts of title was not weary work?" answered me, "Why, it is sometimes a little dull; but every now and then one meets with a *brilliant deed*, which is a reward for all one's labour!!!"

‡ He had a few months before been made a Bencher of the Inner Temple —whether by ballot I know not:

| | |
|---|---|
| "Interius Templum<br>Thomas Walker, Armr<br>Thesaurarius ibm. | Parliament tent decimo Octavo die<br>Maij, 1705, &c. |

"At this parliament, Mr. Thomas Parker (and others) are called to the Bench."

He does not appear ever to have been "Reader," or "Treasurer."—20th April, 1846.

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protection to such as supported religious and civil liberty; but, unfortunately, there is not to be found the smallest fragment of any of his speeches in parliament till the impeachment of Sacheverell.

None of his speeches in the House of Commons preserved.

Not being in the cabinet, he is not answerable for this foolish measure. He probably regretted and condemned it along with Somers and the other Whig lawyers, but when it was commenced, he did his best to bring it to a fortunate conclusion. He was appointed one of the managers on the part of the Commons. Burnet, giving an account of the trial, says, "Jekyll, Eyre, Stanhope, King, *but, above all, Parker*, distinguished themselves in a very particular manner: they did copiously justify both the Revolution and the present administration." I must confess, however, that I have perused the report of his two long harangues at the bar of the House of Lords on the 4th article, which was assigned to him, with considerable disappointment; and I can extract little from either of them to interest us in these times. He contended that the defendant had falsely and maliciously charged her Majesty's administration, both in ecclesiastical and civil affairs, as tending to the destruction of the constitution.

Manager for the Commons on the impeachment of Sacheverell.

Feb. 28. 1710. His speech on the 4th article.

Why those who were of that opinion should not have been at full liberty to say so, we are rather at a loss to understand. But Serjeant Parker, in the name of the Commons of England, upbraids "the Doctor" for his rudeness in assailing the character of the ministers, and the measures of their government. He is rather happy in contrasting the defendant's incitements to insurrection with his doctrine of non-resistance. "Not in terms of lamentation," said Serjeant Parker, "not as grounds of humiliation, or in a language that might become one that thought the only arms of the Church to be prayers and tears does he assail the government; but with all malice, bitterness, reviling, insolence,— endeavouring to raise in his auditors the passions himself puts on, and pointing out (as far as he dares) to arms and violence for a cure: On his own principles, he ought to have taught the people to do their duty, submitting wholly to the Queen and those in authority under her, and to leave the rest to God: But, following his ad-

vice, they would instantly rise in a mass, and if they did not at once restore the Pretender, they would forcibly expel from office, and utterly crush, all who, on the doctrine of resistance to tyranny, were concerned in the Revolution: Is this sermon an exhortation to piety and virtue? or is it not manifestly a trumpet to rebellion? Does the preacher show his congregation their own faults, that they may amend their lives, or attempt to expose the faults of the government, with a view to a forcible change? The duty of passive obedience is so warmly inculcated to cause the destruction of those who deny it: The whole discourse exhorts to insurrection, and not to submission." He thus concluded: "My Lords, the Commons have the greatest and justest veneration for the clergy of the Church of England, and it is with regret and trouble that they find themselves obliged to bring before your Lordships, in this manner, one of that order. But when we find Dr. Sacheverell stripping himself of all that peaceful and charitable temper which the Christian religion requires of all its professors, deserting the example of our Lord and Master, and of his holy apostles, and with rancour branding all who differ from him (though through ignorance) with the titles of hypocrites, rebels, traitors, devils; reviling them, exposing them, conducting them to hell, and leaving them there; treating every one who falls in his way worse than Michael the Archangel used Satan; despising dominion, speaking evil of dignities; like raging waves of the sea, foaming out his own shame; then labouring to sap the establishment, and railing and declaiming against the government; crying *to arms!* and blowing a trumpet in Sion to engage his country in seditions and tumults, and overthrow the best constitution, and betray the best Queen that ever made a nation happy, and this with Scripture in his mouth; the Commons looked upon him, by this behaviour, to have severed himself from all the rest of the clergy; they thought it their duty to bring to justice such a criminal; and they are in no fear of being thought discouragers of those who preach virtue and piety because they, in the supreme court of justice, prosecute him who preaches sedition and rebellion, or to have any design of lessening the respect due to the

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clergy by bringing to punishment him who disgraces that sacred order." *

March 10. 1710. His reply to the managers for the Commons.

Serjeant Parker afterwards replied to the speeches of the counsel for the defendant, and of the defendant himself, and obtained loud applause for the unsparing manner in which he assailed them:—"My Lords," said he, "I am amazed that a person in holy orders, in his distinguished habit, before this awful assembly, should dare to take the tremendous name of God into his lips, and appeal to the Supreme Being for the sincerity and integrity of his heart at the very time when he stands under such a charge, and is neither able to repel it, nor has the sincerity and honesty to repent—to take shame upon himself in the most public way, and to ask pardon of God and of the world for the sin and the crime of which he is guilty. I hope the clergy will be instructed not to preach the doctrine of submission in such manner as to prepare the way to rebellion." But by far the finest part of the reply was the felicitous quotation from scripture:—"In what moving and lively colours does the holy Psalmist paint the crafty insidiousness of such wily *Volpones?* 'Wickedness is therein; deceit and guile go not out of their streets. For it is not an open enemy that hath done me this dishonour, for then I could have borne it: neither was it mine adversary that did magnify himself against me, for then, peradventure, I would have hid myself from him. But it was even thou, my companion, my guide, and mine own familiar friend. There is no faithfulness in their mouths, their inward parts are very wickedness; their throats are open sepulchres, and their words are smoother than oil, yet be they very swords! Like Joab, they pretend to speak peaceably, and smite us mortally under the fifth rib.'" †

He is made Chief Justice of the Queen's Bench.

Whatever we may think of the Serjeant's performances on this occasion, they gave the highest possible satisfaction to the true VOLPONE, whose the impeachment was;—and Lord Chief Justice Holt having died while the proceeding was

* 15 St. Tr. 186. † Ib. 454.

pending, Serjeant Parker was instantly appointed to succeed him;—the Attorney and Solicitor General, who had been less zealous in the prosecution, being passed over.* According to Burnet, an inference was drawn from "this great promotion;" that the Queen, who had attended during the whole of the trial, favoured the prosecution, "for none of the managers had treated Sacheverell so severely as he had done †;" but in reality she had only constitutionally taken the advice of her ministers while she employed them, though she was eagerly desirous to get rid of them.

Parker remained Chief Justice of England for eight years, and it could not be said of him, as of some popular lawyers, who, upon their elevation to high judicial office, have disappointed public expectation: "Consensu omnium dignus imperii nisi imperasset." His fame as a common law chief is not quite equal to that of his immediate predecessor; but this probably arises from there not having been in his time any controversies between the two houses of parliament, or any questions of great political interest coming before him for judicial decision. He was during this part of his career never suspected of any sort of corruption, and the only charge I find brought against him is of having been sometimes rather discourteous to the bar. This is not enough to lower him much in our estimation. Although I can conceive no more striking proof of a mean spirit than for a barrister, when put upon the bench, really to behave with insolence or ill-temper to his former competitors at the bar, it is rather difficult for a Judge altogether to escape the imputation of discourtesy if he properly values the public time; for one of his duties is to "render it disagreeable to counsel to talk

* This appointment took place on the 13th of March, and judgment was not given on Sacheverell till the 23d of the same month. — 2 Lord Raymond, 1309.

† Burnet, iv. 285. De Foe thus jeeringly addressed the High Churchmen on this appointment: "You are desired to take particular notice of her Majesty having severely punished Sir Thomas Parker, one of the managers of the House of Commons, for his barbarous treatment of the Doctor, in pretending in a long speech to show, as he called it, the impatience and superficial jingle of the Doctor's speech. Her Majesty being, as you know, heartily concerned for this prosecution, hath testified her care of the Doctor's character in most justly punishing that forward gentleman, having condemned him for his boldness to perpetual confinement, being appointed to the constant drudgery of Lord Chief Justice of the Queen's Bench, a cruel and severe sentence indeed!"

nonsense." Chief Justice Parker's judgments show an accurate acquaintance with his subject, a logical mind, and great power of illustration.

April 18. 1710. Improper prosecution by the Whigs for high treason of persons concerned in a High Church riot.

He began his judicial career with the trial of Damaree and Purchase, for being concerned in the Sacheverell riots, and assisting to pull down dissenting meeting houses. Although this prosecution was, I think, exceedingly discreditable to the Whig government, I know not that the Lord Chief Justice of the Queen's Bench can be much blamed for it, as we cannot suppose that he was consulted respecting the manner of shaping the offence; and if it was charged as high treason, there were distinct authorities for holding it to be so, although most lawyers probably now think that thereby the statute of Edward III. was overstrained, if not perverted. He would have acted a nobler part if he had summed up for an acquittal; but he pressed for a conviction. In commenting upon the evidence in favour of the character of the prisoners, he said: "There is another unfortunate circumstance I must observe, that we are in a time when many people were led into a belief that doing these actions was a commendable thing; that it was a showing their zeal to the Queen and the Church. And if that be the case, reputation and previous good behaviour are of no avail, and raise no presumption against guilt. Dr. Sacheverell (I would not reflect upon him; he has undergone a censure elsewhere) fell foul of the Toleration Act, and these people, thinking him a confessor for the Church, thought they could do no less than pull down meeting houses, which they considered the seminaries of schism. The doctrine of non-resistance, pronounced to be the doctrine of the Church, is to be propagated by resistance; these people will resist to show they are not for resisting. The Queen's guards are to be attacked to illustrate the rule of passive obedience. When a madness has got among the people, many unaccountable things will be done by men of reputable character. Those who honour Dr. Sacheverell for the things which parliament has condemned, might think it honourable to demolish meeting houses, and to raise seditions and riots which are not to be borne in a civilised country."

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Upon the law of the case he was clear and explicit: "A brothel," said he, "is a nuisance, and may be punished as such, and being a particular nuisance to any one, if he enters to abate it, he may only be guilty of a riot; but if he will presume to pull down all brothels, he has taken the Queen's right out of her hand, and has committed high treason by compassing her death, and levying war against her in her realm.—Of brothels, so of meeting houses." Let us hope that the Lord Chief Justice was ashamed to feel himself obliged to talk such nonsense, although backed by the other Judges, and that it was through his merciful interference that the prisoners, though found guilty, and sentenced to a cruel death, were reprieved and pardoned.*

Oct. 1710. Parker refuses the Great Seal under the Tories.

When the change of government took place in the autumn of the same year, Harcourt, wishing to continue in the office of Attorney-General, and Lord Cowper declining to remain Chancellor, the Great Seal was offered to Lord Chief Justice Parker, and even pressed upon him. He is much lauded for his virtuous self-denial, and it is sarcastically observed that "he is the first lawyer who ever refused an absolute offer of the Seals from a conscientious difference of opinion."† I am very sorry to detract from his merit; but in the first place, principle not considered, he would have acted very foolishly to have given up his place of Chief Justice, which he held for life, in exchange for an office, the tenure of which would have been very insecure; for till after Guiscard's desperate attempt, Harley expected almost daily to be turned out;—and at any rate such a sudden change to the High Church party by the most distinguished manager of the late impeachment, would have reasonably led to the

* 15 St. Tr. 522—703. No other crown case of any importance came before him while Chief Justice, and his only opinion as a common law Judge in a civil case which attracted much notice was on the question whether the word "purchase," in 11 & 12 W. 3. c. 4. against Papists acquiring property, was confined to the acquisition of property by "purchase" in common parlance, or meant every acquisition of property except by "descent." Being called in to assist Lord Chancellor Harcourt, he was for giving the word its largest sense, although occurring in a penal statute, that he might effectuate the intention of the legislature in putting down Popery. The Chancellor decided the other way; but his decree was reversed by the House of Lords.—*Roper* v. *Radcliffe*, 9 Mod. 167.; 1 Br. P. C. 450.

† Parke's "Court of Chancery," 291.

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conclusion that he would give his first piece of preferment to the "Doctor," and would have covered him with such infamy that he must have been treated contumeliously by his colleagues, and kicked out by them whenever they wished to get rid of him. The wonder, therefore, is, that the offer should have been made—not that it was rejected.

Parker was out of parliament for the rest of this reign, and he devoted himself exclusively to the discharge of his judicial duties. In prosecutions for libels during the Tory government, he was supposed to bear very hard upon those who attacked the Whigs. He had caused some alarm to Swift, the most virulent of libellers *—as we learn from the following anecdote related in the "Journal to Stella:"

Anecdote of Swift picking up his pen in the Court of Queen's Bench.

I was to-day at a trial between Lord Lansdown and Lord Carteret, two friends of mine. It was in the Queen's Bench for about 6000*l.* a year. I sat under Chief Justice Parker, and his pen falling down I reached it up. He made me a low bow; and I was going to whisper him that 'I had done good for evil, for he would have taken mine from me.' I told it Lord Treasurer and Bolingbroke. Parker would not have known me if several Lords on the bench and in the Court bowing had not turned every body's eyes and set them a whispering. I owe the dog a spite, and will pay him in two months at farthest, if I can."†

He is libelled by Swift.

This threat Swift afterwards executed, by inserting the following passage in his famous pamphlet, entitled, "The Public Spirit of the Whigs," denouncing the Chief Justice as a favourer of publications which attacked the Tories, while he punished high church publications with relentless severity, and as having become a keen supporter of the Protestant succession after having been a rank Jacobite: "I look upon it as a great evil to see seditious books dispersed among us, apparently striking at the Queen and her administration, at the constitution in church and state, and at all religion; but

* Morphew, the publisher of Swift's "Conduct of the Allies," had been summoned before the Chief Justice, threatened with severe punishment if he persisted in concealing the author's name, and bound over to appear next term to plead to an indictment for a seditious libel.

† 28th October, 1712.

whether this remissness may be imputed to Whitehall or to Westminster Hall, is other men's business to inquire. As for the poor nonjuring clergyman who was trusted with committing to the press a late book on the subject of hereditary right, by a strain of *summum jus*, he is now, as I am told, with half a score children, starving and rotting among thieves and pickpockets in the common room of a stinking jail. However, I would fain ask one single person in the world a question—'Why he has so often drank the abdicated King's health upon his knees?' But the transition is natural and frequent, and I shall not trouble him for an answer." If the taunt against Parker as against Somers had been that he was "sprung from the dregs of the people," however ungenerous it might have been, there would have been some foundation for it; but the reckless invention of a falsehood seems necessary to give full gratification to Swift's malignity. Well might the renegade Whig say that "transitions were natural, and frequent."—The Chief Justice wisely took no notice of this libel, and the Scotch nobility would have acted a more dignified part if they had imitated his example, instead of whiningly going in a body to Queen Anne and insisting that a reward should be offered for the discovery of the author, because it likewise attacked them, saying, that "their whole revenues before the union would have ill maintained a Welsh Justice of Peace, and that some of them had since gathered in England more money than ever any Scotchman who had not travelled could form an idea of."*

De Foe brought before him.

De Foe, who had celebrated Parker's elevation to the bench, had recently been gained over by the personal civilities of Queen Anne, and being brought before him on a charge of libel, the Chief Justice is said to have expressed satisfaction "that so notorious a libeller was about to be punished for going against his old friends and principles." This story is highly improbable, but the Chief Justice certainly somehow had offended the Journalist very deeply, for

* This seems to have been the notion of the Earl of Salisbury, who, to cure the extravagance of James I., caused to be exposed upon a table in silver for the King's inspection a sum of money for which his Majesty had given a written order on the Exchequer.

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he was now violently vituperated in the "Review," a periodical in which Daniel for a time assailed the Whigs under pretence of going beyond them in liberality.

His speech at a meeting of the Privy Council.

The Chief Justice was sworn of the Privy Council at the time when he was raised to the bench, and he was summoned to give his advice upon the Recorder's report of capital convictions at the Old Bailey. As he was not a member of the Cabinet, and on the contrary he still avowedly adhered to the party opposed to the government, we should have thought this the only occasion when he would have attended on being summoned, but I am perplexed by meeting in Swift's "Journal to Stella," under date, April 7. 1713, the following entry: "At a Council held to-night, the Lord Chief Justice Parker, a Whig, spoke against the peace; so did Cholmondeley, another Whig, who is treasurer of the household." I can only conjecture that a general meeting of the Privy Council had been held for formal business, when these two individuals, without being asked, took this opportunity to express their opinion on the great question of peace and war in the Queen's hearing."*

He grants a warrant for the apprehension of Jacobites.

The last instance I have discovered of the interference of the Chief Justice of England as a magistrate of police was by Parker in Queen Anne's time,—to counteract the plot that was going on shortly before her death to bring in her brother to succeed her. An information being laid before him as Chief Justice respecting the unlawful enlistment of soldiers, he granted a warrant, under which one Kelly was arrested a few days after at Deal with five men he had enlisted, bearing a pass from the Earl of Middleton, Secretary of State to James III.,—whereupon Bolingbroke was reluctantly obliged to issue a proclamation offering a reward for the apprehension of the Pretender if he should land in England.†

His conduct on the death of Queen Anne.

Under the Regency Bill the Chief Justice of the King's Bench had important functions to perform on a demise of the

* Cholmondely for this impertinence was immediately turned out of the household.—*Journ.* April 8. 1713. Parker luckily held "quamdiu se bene gesserit."

† 6 Parl. Hist. 1358.

crown, being one of the seven official Lords Justices who, together with those personally appointed by the successor, were to carry on the government till his arrival. Upon the summons of all Privy Councillors to attend, after the Queen with a dying hand had delivered the Treasurer's staff to the Duke of Shrewsbury, Chief Justice Parker immediately repaired to Kensington and joined in the measures which were taken to secure the succession of the House of Hanover.

He gains the favour of Geo. I. and the Hanoverians.

When George I. landed at Greenwich, Chief Justice Parker was on the beach along with the other Lords Justices, and met with a very flattering reception from the new Sovereign, who had been told that he was a good Whig, and a warm friend to the Revolution settlement. He, who had started as an attorney's clerk in a small provincial town, and had got on by a vigorous intellect joined with stupendous application to business, now showed in a marvellous manner the versatility of his powers, by becoming a courtier and making himself personally agreeable to George I. and the German attendants who accompanied him, male and female. Whether, like Sir Robert Walpole, he conversed with the King in bad Latin, or how he made himself intelligible to the others, I have not been able to ascertain, but he certainly was early a great favourite with them, and they wished to give him the Great Seal,—probably from an expectation that a new Chancellor entirely of their own making would pass whatever grants to them they chose to ask.

He is raised to the peerage. March 10. 1716.

There were intrigues for this purpose on foot so early as the spring of 1715, although I cannot say that Parker was himself privy to them, and they gave rise to reports of Lord Cowper's speedy resignation. Subsequently an ineffectual attempt was made to induce him to exchange his office for that of President of the Council—from a pretended regard for his health — but from a real dislike of a Chancellor who had objected to improper grants of honours and money. Meanwhile Parker was raised to the peerage by the title of Baron Parker, of Macclesfield, in the county of Chester, and the better to enable him to support this dignity, a pension for life was bestowed upon him of 1200*l.* a year.

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He opposes the Septennial Bill.

Being now legitimately restored to politics, he was very diligent in his attendance in the House of Lords, and took an active part in debate, although still we have to lament that we have hardly any remains of his oratory. His maiden speech as a Peer is said to have been *against* the Septennial Bill, which surprises us much, as the measure was supported by almost all the Whigs and courtiers; but he had either been influenced by the grave objections to it on constitutional grounds, or had thought it convenient to show that he could make himself formidable. He called up Lord Cowper, from whose defence (as reported) it might be inferred that the Chief Justice had made a violent attack upon the King's ministers, and had even reflected upon the severity exercised towards those engaged in the late rebellion.*

June 24. 1717. Supports the prosecution of the Earl of Oxford.

But Lord Parker warmly supported the government, when, after long delays, the Earl of Oxford's impeachment at last came to a hearing. Lord Harcourt having moved, on the dexterous suggestion of Walpole, that evidence should not be received respecting "high crimes and misdemeanours" till the articles charging "high treason" were disposed of, our Law Lord answered, "that in all courts of judicature it is the usual and constant method to go through all the evidence before judgment be given upon any part of the accusation: that though the House of Peers be the supreme court of the kingdom, yet it has ever a regard to the rules of equity, and even to the forms observed in the Courts below—which rules and forms required that the trial should be conducted as the Commons proposed — and thus only could the conduct of the prisoner be satisfactorily investigated and justice done between him and the country." He concluded, with the following unfeeling sentiment — little foreseeing that he himself was one day to stand disgracefully at the same bar as a convicted culprit: "As for the noble Earl appearing at the bar in the abject condition of a traitor, it is but a piece of formality which does him no manner of hurt, and to which persons of the highest rank have ever submitted to clear their innocence."† But the opinion had become very general that the

* 7 Parl. Hist. 305, 306. † Ib. 486.

prosecution was oppressive, and many of Oxford's former opponents supported the motion which put an end to it." *



Opinion in favour of the King's authority over the education and marriage of his grandchildren.

Nothing ingratiated Lord Parker with the King so much as the opinion which he himself gave, and in which he prevailed on a great majority of the Judges to concur, respecting the power of the reigning Sovereign over his grandchildren. There was now such open enmity between his Majesty and the Prince of Wales that Lord Carteret declared prophetically, "This family will quarrel from generation to generation." † The Prince's numerous children were all in England except Frederick, the eldest, left behind in Hanover; and the King, to annoy his son, asserted the power by his prerogative to direct their education, and prospectively to dispose of them in marriage. The Prince *contra* maintained that by the law of nature, and by the law of the land, this power belonged exclusively to himself as their father and the heir apparent to the Crown. Lord Chancellor Cowper would not take upon himself to decide the question, and wrote a letter to Lord Parker, signifying the King's pleasure that all the Judges should meet and give him their opinion, "Whether the education and the care of the persons of his Majesty's grandchildren, now in England, and of Prince Frederick, eldest son of his Royal Highness the Prince of Wales, when his Majesty shall think fit to cause him to come into England, and the ordering the place of their abode, and appointing their governors, governesses, and other instructors, attendants, and servants, and the care and approbation of their marriages, when grown up, do belong of right to his Majesty as King of this realm?" The truth was that as no King of England had lived to have grandchildren since the time of Edward III., when the black Prince was allowed to have the care of his son Richard, and as no institu-

* Ante, p. 370.

† "There have been four Princes of Wales since the death of Anne, and all the four have gone into bitter opposition." — *Lord Mahon*, i. 314. The scandalous St. Simon thus accounts for the dislike of the first to the second George: "Jamais le Père n'avoit pu souffrir ce fils, parcequ'il ne le croyait point à lui."—*Mem.* xxviii. 197. But the prevailing opinion now is, that Sophia of Zel was ever a true wife.

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tional writer had discussed the subject, the Judges had no materials for giving a judicial opinion upon the first branch of the question; and, with respect to the second, although the reigning Sovereign had exercised a control over the marriages of the royal family, and the contracting of a marriage with any of the blood royal without his consent was considered a contempt of the Crown, such marriages were undoubtedly valid in law, and the only mode of punishing those concerned in them was by a prosecution in the Star Chamber,—so that when this Court was abolished, the alleged prerogative was without any means of vindication or redress. However, Lord Parker, having assembled all the Judges at his chambers in Serjeant's Inn, read the Lord Chancellor's letter to them, and intimated his own opinion strongly to be that the whole of the question was to be answered absolutely in the affirmative. He was able to bring forward nothing in support of the grandfather's right to have the care of his grandchildren, except that "the law of God and law of nature are *rather* with the grandfather." But he showed by various instances, beginning with the match made by Henry III. between his sister Joan, without asking her consent, and Alexander King of Scots, that the Kings of England had assumed to themselves, and had generally been allowed to exercise, the right of disposing in marriage of those who, being of the blood royal, were in the succession to the throne. He prevailed upon nine of the Judges to agree with him; but two, Baron Price, and Baron Eyre, the Prince of Wales's Chancellor, differed—returning for answer, that though the approbation of the marriages of the royal family belonged to the King, there was no instance where a marriage had been treated by the King for any of the royal family, without the consent of the father, and that the case of the Prince of Wales was no exception to the general rule, by which the father has a right to the custody and education of his children. George I. was exceedingly delighted with having so large a majority of the Judges in his favour, and he ordered their opinions to be recorded in the Books of the Privy Council, as a war-

Jan. 22. 1718.

rant for the authority which he was resolved to maintain. He attributed this triumph over his son mainly to the exertions of Lord Chief Justice Parker, which may possibly account for the transfer of the Great Seal, which so speedily followed.*

* 15 St. Tr. 1195. Things remained on this footing till the year 1772, when the Royal Marriage Act passed, 12 Geo. 3. c. 11. Some legislation on the subject was probably necessary; but the provisions of that Act have produced serious evils, and will require modification.

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## CHAPTER CXXII.

### CONCLUSION OF THE LIFE OF LORD MACCLESFIELD.

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Chief Justice Parker accepts the Great Seal.

EARL COWPER, from whatever cause, having on the 18th of April, 1718, resigned his office, the Great Seal was, for a short time, put into commission; the Commissioners being Mr. Justice Tracy, Mr. Justice Pratt, and Mr. Baron Montague. The general expectation was that the "good old Whig," Sir Joseph Jekyll, who was Master of the Rolls, with great reputation as an Equity Judge, and, enjoying his faculties unimpaired, though well stricken in years, would have been appointed to succeed him,—the then Attorney and Solicitor General not being very eminent in their profession.* But on the 12th of May, to the great surprise of Westminster Hall and of the public, it was announced that Lord Parker, from being Lord Chief Justice of England, had become Lord High Chancellor.† Lord Holt, Lord Mansfield, and Lord Ellenborough refused the offer which he accepted, and it would have been well for him if he had adopted the same course, as thereby he would have escaped the temptations and perils which proved his ruin. But I cannot condemn the choice which he made. He felt that he could creditably perform the duties of his new office, and he might think that he was likely to do more in it for his own reputation and for the public advantage, than if he had remained a common law Judge. He made an excellent bargain for himself and his family — according to which, beyond the 2000*l.* usually granted with the Great Seal for equipment, and 4000*l.* a year salary, and beyond other profits and presents, he actually received the sum of 12,000*l.* in ready money from the King, — and a Tellership of the Exchequer was bestowed upon his son. Three days after his appointment he led a grand procession from the Inner Temple to West-

* Lechmere, the Attorney, accepted a peerage, and was soon forgotten. Thompson, the Solicitor, was dismissed for a false charge of corruption against his colleague.

† Cr. Off. Min. 140. b.

minster, and he was installed in the Court of Chancery with the usual solemnities. Afterwards *, probably in performance of a promise made to him, he was created Earl of Macclesfield, and it will be convenient that henceforth I should give him his new title, by which, as Chancellor, he is historically known.

Apprehensions of the Chancery practitioners of Lord Macclesfield's incompetence.

Notwithstanding his high reputation, the old Equity practitioners grumbled at his appointment, because he had not been trained to draw bills and answers, and had never regularly practised at their bar. Although occasionally he had been called in to assist them in cases of importance, his regular routine had been to ride the Midland Circuit, and to sit first in the Court of Queen's Bench, and then in the Court of Common Pleas, till he was made a Judge. Never having been Attorney or Solicitor General, he had never, even for a single term, transferred himself to the Court of Chancery. The consequence was, that although he was regarded generally as a "dungeon of law," yet by those who knew little beyond the technical rules of Chancery pleading, it was thought he never could be made to understand them, and, therefore, that he was quite unfit for his office.

Lord Macclesfield a great Equity Judge.

He turned out to be one of the greatest Equity Judges who ever sat in the Court of Chancery; and not only is he entitled to the equivocal compliment that none of his judgments were reversed, but his authority upon all points, whether of a practical or abstruse nature, is now as high as that of Nottingham, Somers, or Hardwicke.

He introduces no reforms.

I am sorry I cannot praise him for any correction of abuses in his Court. Well would it have been not only for his fame but for his fortune had he begun with making regulations against the sale of offices and for securing the money of the suitors. Alas! he was under the dominion of a vice which was an effectual bar to all such improvements—AVARICE. This never seduced him to receive a bribe, but drove him as long as he could consider himself protected by existing usages, however objectionable, to regard the accumulation of wealth as the great object of his existence. Hence he not only proposed no Bill in parliament and issued no General Order for

His avarice.

* 15th Nov. 1721.

remedying the evils which must forcibly have struck him when he first examined the Masters' offices, and saw how the interests of the suitors were sacrificed by the prevailing system; but, for his own benefit, he carried venality in the disposal of offices to a pitch before unknown. When he must have been aware that the South Sea madness had taken possession of the functionaries acting under his control, to the peril of those who were entitled to his protection, he would not interfere,—from the dread of touching his own emoluments,—till in the midst of his sordid infatuation he was suddenly precipitated from power, and (what he probably felt as a greater misfortune) he was stript of a large portion of his ill-gotten gains.

His favouritism.

There were loud complaints of his discourtesy to some counsel, and his partiality to others, particularly to Philip Yorke, afterwards Earl of Hardwicke, which gave deep offence to the bar, and hastened his own fall.

His decisions.

In deciding on his tribunal between litigating parties, however, he displayed in every other respect the high qualities of a consummate magistrate. We are not told, and it would be idle to conjecture, the course of study he pursued for making himself master of Equity, or the method he adopted in thoroughly comprehending and preparing satisfactorily to decide the important cases which came before him. His leading judgments must have been the result of much labour and anxiety applied to each of them, as well as of profound learning and an extraordinary share of logical acuteness. They are chiefly to be found in the first and second volumes of Peere Williams, who is an accurate and skilful reporter, but unfortunately is too succinct in stating the *rationes decidendi*, and does not do justice to the methodical arrangement and nervous language for which Lord Macclesfield was celebrated.

Unborn child recognised by the law, so that estate may vest in it.

I shall select a few of his decisions which I may hope to make intelligible to non-professional readers. An ancestor of the late Sir Francis Burdett devised his estates "in case he should leave no son at the time of his death" to his cousin, Francis Hopegood, and died leaving his wife pregnant without his knowledge [*privement ensient*]. She gave birth to a

son—and the question was, which should have the estates?—the devisee contending that the testator had *left no son at the time of his death*, as it was then doubtful whether any child would be born of the widow and what the sex might be, so that the estates vested in the devisee, and could not be devested by the son's subsequent birth. But Lord Macclesfield, after consulting the Judges of the Court of Common Pleas, held that the infant, Sir Robert Burdett, though not actually born at the death of his father, yet in the eye of the law had existence in his mother's womb [*ventre sa mere*],—as if a pregnant woman takes poison to kill her child, and the child being born alive dies of the poison, she is guilty of murder; an unborn child therefore may take as heir or devisee, and here it could not be imagined that the testator ever intended to disinherit his own son*: So the estates remained with the Burdetts.—There being a bequest, however, by the Duke of Devonshire, of a sum of money "to all the natural children of his son by Mrs. Heneage," and the question arising whether natural children born after the will should share, Lord Macclesfield held that even a child of which Mrs. Heneage was pregnant at the time of the will, was excluded, for a bastard can only take by its name of reputation, which it cannot acquire till after its birth.†

But not if the child be illegitimate.

An act was passed in the reign of Queen Anne‡, "to oblige the Jews to maintain and provide for their Protestant *children*," whereby it was enacted, that "if any Jewish parent, in order to compel his Protestant *child* to change his or her religion, shall *refuse* to allow such Protestant *child* fitting maintenance suitable to the degree or ability of the parent, and to the age and education of such *child*, it shall be lawful to the Lord Chancellor to make such order for the maintenance of such Protestant *child* as he shall think fit." A Jew had a daughter, Jessica, who turned Protestant. The rich father left the whole of his great wealth to charity. The

Construction of the Act of Anne for the conversion of the Jews.

* Sir *Robert Burdett* v. *Hopegood*, 1 P. W. 486.

† *Metham* v. *Duke of Devon*, 1 P. W. 529. This decision was followed by Sir W. Grant, M.R., in *Earle* v. *Wilson*, 17 Ves. 528.; and in *Arnold* v. *Preston*, 18 Ves. 288.

‡ 1 Anne c. 30.

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daughter, having reached the mature age of forty-four years, and being married to a Christian, petitioned for a maintenance under this statute. There were great difficulties in her way, for, supposing her to be still a *child*, it was objected, how could her father be said to have *refused* to allow her a maintenance, when she did not allege that she had ever asked him to do so? *Lord Chancellor.* "I strongly incline to think this case within the act. The petitioner is the Protestant child of a Jewish parent, though the parent be dead. Suppose the child of a Jew turns Protestant, and the Jew by will gives his estate to trustees upon a secret trust, that if the child turn Jew the child shall have the estate, and not otherwise: as this would be clearly within the mischief, so every one must wish it to be within the meaning of the act. It is not said that the complaint shall be against the *father*, nor that the order shall be made upon or against the *father*, so that this case fits every word made use of by the legislature. Suppose, a petition being exhibited, the Jew had died pending the suit, having given all away from his Protestant child for having become Protestant, doubtless the order might be made against the *executor*. Then, as to the *refusal* of the parent, it is not to be intended that the Jew must make an actual refusal in words, for by that construction the statute might easily be evaded. If the Jew does by his will dispose of all his estate from his child, this is in law a *refusal;* and, unless some other reason appear, it shall be understood, *because the child was a Protestant.* The obligations of nature plead so strongly on behalf of a child, that when such a case happens, some great provocation must be supposed to have occasioned it, and in the absence of any other, the Court will consider the true reason to be this difference in religion." *

"Dying without issue," as applicable to real or personal estate.

Lord Macclesfield, reversing the decree of Sir Joseph Jekyll, decided the famous case of *Forth* v. *Chapman*, holding, that though a devise over of real property on the first devisee "dying without issue" is void as too remote, the meaning

* *Vincent* v. *Fernandez*, 1 P. W. 524. See other orders made under this statute for the maintenance of the children of Jews, by Lord Macclesfield and Lord King, 1 Sand. Orders, 457. 524.

being, if there should be a failure of issue at any time, however distant, the same words, when applied to personal property, shall be construed to mean, if the first taker die leaving no issue at the time of his death, and therefore the bequest over is good.*

Persons committed for marrying wards liberated under general pardon.

A general pardon coming out, according to the fashion of that age, on account of some auspicious event in the royal family, with an exception of "all contempts and offences for which any prosecution was then pending, and which had been prosecuted at the charge of any private person," the question arose, whether gentlemen committed to the Fleet for running away with wards of Chancery were entitled to the benefit of it? Lord Macclesfield liberated them all, saying that their contempt, or offence, ended only in the punishment of the party offending, and not in relieving or redressing the prosecutor,—as the marriages, though irregularly contracted, could not be dissolved, and the wards could not be restored to their former condition. †

Wife entitled to "paraphernalia" if creditors have remedy against real estate of husband.

Lord Macclesfield established an important rule in favour of the female sex—that, though the wife's paraphernalia [jewels and personal ornaments] are subject to the debts of the husband, she shall be entitled to her paraphernalia where those debts are a charge on the real estate of the husband. *Lord Chancellor.* "*Paraphernalia* are not deviseable by the husband from the wife, any more than heir-looms from the heir. Though the creditor may subject a specific legacy to his debt, yet the legatee shall, in equity, stand in the place of the bond creditor or mortgagee, and the legacy is relieved. If the legatee shall have this favour in equity, much more shall the wife be privileged with respect to her *paraphernalia,* which are preferred to legacies. Wherever the creditors are

* 1 P. W. 664. Lord Kenyon, in *Porter* v. *Bradley,* doubted the soundness of the rule laid down by Lord Macclesfield (3 T. R. 143.); but Lord Eldon, in *Crooke* v. *De Vandes,* said that Lord Kenyon's dictum in *Porter* v. *Bradley* went to shake settled rules to their very foundation; and Lord Macclesfield's distinction must be supported, 9 Ves. 203. This distinction will hereafter be rendered immaterial by the "Wills Act," which enacts that "dying without issue" shall always mean *at the death of the first taker,* so as to give validity to the devise over; 7 W. 4. and 1 Vic. c. 26. s. 29.

† *Phipps,* son of *Sir Constantine Phipps,* v. *Earl of Anglesea,* 1 P. W. 696.

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sure of being paid, the *paraphernalia* shall be retained by the wife." *

Guardian and ward.

In the case of *Mr. Justice Eyre* v. *the Countess of Shaftesbury*, in which Lord Macclesfield held, that where the guardianship of children is left to several persons, without saying "and the survivor of them," the survivor shall be guardian, —he entered most elaborately into the whole law of guardian and ward, and the jurisdiction of the Chancellor over infants even in the lifetime of their parents, expressing opinions which have materially guided the decisions of the court on this important subject down to our own time. †

Policy of insurance void for concealment.

Commercial law in England was still in its infancy, and the contract of insurance was so little understood that a court of law would have allowed a merchant to recover on a policy, although at the time when he effected it he had intelligence, which he concealed from the insurers, that the ship had encountered a storm, and was probably lost. *Lord Chancellor.* "The merchant has not been guilty of any express misrepresentation, but he has not dealt fairly in this case. He ought to have disclosed to the insurers the intelligence he had of the ship being in danger; he feared that she was lost, though he had no certain account of it. The concealment is a fraud." *Decree for the policy to be delivered up, with costs.* ‡

Sequestration to be executed in Ireland.

Lord Macclesfield laid down doctrine with regard to Ireland that would now raise a rebellion in that country, saying that he would grant a sequestration to be executed there "as the courts of justice here have a superintendent power over those in Ireland, and a writ of error lies in the Court of King's Bench in England, to reverse a judgment of the Court of King's Bench in Ireland." §

Lord Macclesfield's last judg-

When *Dr. Martin and Lady Arabella Howard, his wife*, v. *Nutkin*, came before Lord Macclesfield, he must have been in

* *Tipping* v. *Tipping*, 1 P. W. 729.; *Puckering* v. *Johnson*, ib. 730.

† 2 P. W. 102.

‡ *De Costa* v. *Scandret*, 2 P. W. 169.

§ *Fryer* v. *Bernard*, 2 P. W. 261. I never could understand how this writ of error could have originated; for if Ireland were a colony, or a conquered country, the appeal would have been not to the King's Bench in England, but to the King in council. It was abolished by 23 Geo. 3. c. 28.

a great agony, for this was the last day he sat in court, and he well knew the disgrace which was impending over him. Yet he had self-possession to examine the case deliberately, and to dispose of it so as to make it a valuable precedent, which has been frequently quoted and acted upon. The plaintiffs lived at Hammersmith, very near the church, and were much disquieted by the ringing of a peal of bells at five o'clock every morning. They were about to remove to a distance, when it was agreed between them and the parish, at a vestry meeting, that, in consideration of their erecting a new cupola, clock and bell, the five o'clock peal should not be rung during their lives or the life of the survivor. The new cupola, clock and bell, were erected, and for two years the agreement was observed by the parish; but at the end of that time, there being a revolution in Hammersmith, an order was made by the vestry that a peal should be rung every morning at five o'clock, according to ancient usage, and the churchwardens executed the order, the peal being rendered louder by the present of the plaintiffs. The Lord Chancellor granted an injunction against the ringing of any bells at that hour, on the ground that there was a meritorious consideration executed on the plaintiffs' side; that the churchwardens were a corporation, and might sell the bells, or silence them; that the ringing of a peal of bells at five in the morning did not seem to be of any use to others, though of very ill consequence to the Doctor and Lady Arabella; and that the agreement which was beneficial to the parish, was binding on the parishioners and their successors.*

ment on the ringing of parish bells.

I ought to mention here that while Lord Macclesfield was Chancellor, the long protracted controversy arose between the celebrated Dr. Bentley, and the fellows of his college, and that an application was made on their behalf by Dr. Colbatch for the interposition of a royal visitor to be appointed under the Great Seal. Of this affair we have the following amusing account by Bishop Monk, in his "Life of Bentley," showing that such applications to the "Keeper of the King's conscience," though judicial, were then dealt with rather on the principles of policy than of justice: "With the

Controversy between Dr. Bentley and the Fellows of Trinity College, Cambridge.

* 2 P. W. 266.

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Lord Chancellor, Colbatch had several personal interviews, and, at his desire, laid before him a detailed statement of the College grievances, and heard from him with great delight that it was intended to advise the King to grant the full visitatorial power to the Bishop of Ely, and that the patent for this purpose would pass the Great Seal. At other times his Lordship intimated his opinion that the Bishop was already authorized to execute those functions. His chaplain, Zachary Pearce, who had daily opportunities of conversing with the Chancellor, encouraged Dr. Colbatch with the same constantly repeated hopes of his taking some decisive step in this business. But Lord Macclesfield was a politician, and an adept in the subtlest arts of political management. It appears to have been the feeling of the ministry that Bentley, being a professed and active partizan of the Whigs, must not be abandoned in the hour of his necessity: at the same time it was seen that, if an absolute refusal were given to those who only prayed for common justice, the odium of the Master's proceedings would be transferred from himself to the government. The Lord Chancellor continued for at least three years to amuse Dr. Colbatch with expectations that the prayer of the petitioners was immediately to be complied with. It may appear surprising that a man of sense, who knew the world, should have suffered himself to be so long deceived; but the candour and frankness of the language held by the great man, and the confidence reposed in his designs by Pearce, his chaplain, will account for the credulity of the Doctor and his confederates." *

Lord Macclesfield as a politician. Lord Macclesfield in the Cabinet.

We must for the present take leave of Lord Macclesfield in the character of a Judge, and view him acting avowedly as a statesman. Though a member of the cabinet, and a great personal favourite of the King, I do not think that he ever possessed much political influence. Stanhope and Sunderland seem to have brought forward the "Dissenters' Relief Bill," and the "Peerage Bill," without consulting him; and Walpole entertaining a little jealousy of his personal interest with the King and the Hanoverian ministers, reposed no

* Vol. ii. 79, 80.

confidence in him, and when trouble came made no effort to save him. Yet the Chancellor seemed very secure in his place; and being in no danger from ministerial crisis or formidable rival, had it not been for the storm which unexpectedly arose from the abuses of the Court of Chancery, his chancellorship would probably have been one of the longest, as well as most distinguished in our annals.

Nov. 11. In the House of Lords.

He took his seat on the woolsack at the first meeting of parliament after his appointment in November, when he had to read the King's speech to the two Houses, his Majesty having as yet made no progress in acquiring the language of his new subjects.* Lord Cowper soon went into smart opposition, and Lord Macclesfield is said to have supported the measures of the government with great vigour; but still the published Parliamentary Debates are so defective, that we know little of his style of eloquence. The London Magazine, and the Gentleman's Magazine, were shortly after established †, in which, under feigned names, we have the speeches of the most eminent debaters on both sides by Samuel Johnson and other distinguished men, who began their career by this exercise. Till then we are confined to the meagre notices of speeches to be found in the "Historical Register," "Boyer's Political State of Europe," and "Timberland's History and Proceedings of the House of Lords."

Jan. 1722. Supports the Quakers' Affirmation Bill.

Macclesfield appears to have done himself great credit by defending the "Quakers' Affirmation Bill" against the Bishop of Rochester, who endeavoured to prove that none but Christians should be admitted as witnesses, and that Quakers are not Christians. ‡ When Atterbury's case came on, he successfully counteracted a scheme, supported by Lord Cowper, that to create a seeming grievance the Bishop should be forbidden, under a standing order of the House of Lords, to make any defence against the Bill of Pains and Penalties in the House of Commons §; but soon

* I do not find any statement as to the manner in which the ceremony was conducted when the King had to deliver an answer to the address of the House of Lords. It must have appeared rather ridiculous if the Chancellor first read the address and then the answer. — See 8 Parl. Hist. 502.

† In 1731 and 1732.

‡ 7 Parl. Hist. 942.

§ 8 Parl. Hist. 210.

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after, I am afraid, he behaved ungenerously and disingenuously to his defeated predecessor. A committee of the House of Lords, appointed to enquire into the "Plot," presented a report insinuating that Lord Cowper was implicated in it, and he, in vindicating himself, had altogether denied its existence. A resolution being now carried, that the Lord Chancellor, in the name of the House, should return thanks to the Committee for their services, Macclesfield pretty plainly repeated the insinuation of Lord Cowper's complicity: Said he, "Your application in going through so many papers of affected and studied obscurity, your candour and exactness in examining the persons concerned, and in representing what they said [this was what Lord Cowper had most bitterly complained of *], the accuracy and judgment of your remarks, *though subject to the cavils of those who are loath to have the truth found out,* must give a sensible pleasure to every Lord who has heard your report read, by enabling him to form a satisfactory judgment concerning this abominable work of darkness which the actors have endeavoured to surround with impenetrable obscurity."

Behaves unhandsomely to Lord Cowper.

Enmity between them.

The extreme enmity now subsisting between these two great men, is very strikingly proved by the advantage taken of the Lord Chancellor's detention at St. James's when he ought to have been present in the House of Lords, and the attempt to fix a stigma upon him for an unintentional irregularity.† After a diligent search, I really can find nothing more respecting Macclesfield's proceedings in the House of Lords for the seven years which elapsed between his being appointed Chancellor and his impeachment.

Lord Macclesfield a Lord Justice in the King's absence.

During this period, as often as the King went abroad (which he did several months every year), the Chancellor was appointed a Lord Justice, and was at the head of those who acted in the regency. The Prince had been at first appointed sole guardian of the Realm, no precedent being found for associating the heir apparent with others in a commission

* Ante, p. 401.

† Ante, p. 399., 7 Parl. Hist. 960. I am glad to think that there is a better feeling among Law Lords at the present day.

of regency, but he was now excluded from the appearance as well as the reality of power.

Resists proposal of George I., that heir to the Crown of England should renounce foreign dominions.

The only political measure in which I find the Chancellor personally mixed up, arose out of these unhappy disputes between the father and the son. The resentment of the King was at last carried so far that, out of spite to his successor, he proposed, under pretence of consulting the good of the nation, that hereafter no one should be allowed to be Sovereign of this country without renouncing any foreign dominions to which he might be entitled — not held in right of the crown of England. The proposal seems to me very fair and salutary, and agreeable to well-established constitutional as well as international law; but we are told that the opinion of Lord Macclesfield being demanded in a conference on the subject, "the answer given by the Chancellor fully put a stop to the measure as inexpedient and impracticable, and liable to be followed by dangerous consequences."* Had it been adopted, it would have saved England much perplexity and expence, and some discredit in the two following reigns. Happily there is little danger of the recurrence of such a state of things, but for this reason, perhaps now is the time to pass the law which was projected by the founder of the Hanoverian dynasty in England.

Macclesfield's seeming stability.

When parliament met in the month of November 1724, Lord Macclesfield seemed at the height of worldly success, with the prospect of a long continuance of his greatness. From the union of genius for legal distinctions and unwearied industry, he had acquired with the public the highest possible reputation as a Judge, and except by a few acquainted with the mysteries of the Court of Chancery, he was supposed to be immaculate.† His levées were crowded by laity and

* 2 Cor. Sir R. W. 13.

† No attention is to be paid to the line in Duke Wharton's satire on the lawyers,

"When Parker shall pronounce one right decree,"

as one of the impossibilities on which he says,

"Then shall I cease my charmer to adore,
And think of love and politics no more."

For though he is right with respect to PAGE, and one or two more, he scatters

clergy. At his newly-acquired country seat, Shirbourn Castle, he exercised a splendid hospitality, and he had been appointed Lord Lieutenant not only of Oxfordshire in which it stood, but likewise of the adjoining county of Warwick, in which likewise he had acquired large possessions.

Walpole, now the undisputed Prime Minister, had, by his dexterous management in the last session, almost annihilated opposition, and for a time Whigs, Tories, and Jacobites, without show of resistance, submitted to his rule. The Great Seal, under such a Minister, was considered free from all the perils and anxieties which generally surround it. For a time all went well, and another very smooth session was anticipated. The Chancellor might himself have been thought an emblem of the joyous conjuncture which he described, when in the King's name he pronounced these words: — "My Lords and Gentlemen, I am persuaded you share with me in the satisfaction I feel at the prosperous situation of affairs; peace with all powers abroad; at home perfect tranquillity, plenty, and an uninterrupted enjoyment of all civil and religious rights, are most distinguishing marks of the favour and protection of Divine Providence. And these, with all their happy consequences, will, I doubt not by the blessing of God upon our joint endeavours, be long continued."*

Beginning of his troubles.

Whether Macclesfield had any misgivings or fatal anticipations respecting himself I know not, but his ruin was at hand. In a few days the storm of public indignation arose against him; in a few weeks he was deprived of his office, and in a few months he was a prisoner in the Tower, under sentence to pay a heavy fine by the unanimous judgment of the House of Lords,—while the vulgar insulted him with the oft-repeated saying that "Staffordshire had produced the three greatest rogues ever known in England,—*Jack Shepherd, Jonathan Wild*, and TOM PARKER!"

his arrows at random among political opponents; and there cannot be a doubt that, till the very eve of Parker's disgrace, he was as much respected as any man who had ever sat in the marble chair. The Duke went so far to prove his personal enmity, as actually to sign a protest against the leniency of the sentence pronounced by the Peers on his victim.

* 8 Parl. Hist. 396.

Frauds on suitors in Court of Chancery.

Charge against the Chancellor.

Soon after the bursting of the South Sea Bubble, voices—at first ambiguous—were heard whispering that great frauds had been committed on the suitors in the Court of Chancery, and that their money had been made away with by the Masters, to whose custody it had been intrusted till the interminably delayed decree should be pronounced. Rumours soon became louder and louder, and the Chancellor's name was pronounced as having caused or connived at all the abuses which had been discovered. The whole government was next involved in the obloquy, and the ever-watchful opponents of the Minister were ready to say that such enormities could only be sanctioned under Hanoverian auspices, under Whig rule, and under that section of the Whigs which had now usurped supreme power. Walpole, with his usual shrewdness and decision, immediately appointed a committee of the Privy Council in whom the public would place confidence, to investigate the subject, and to make a report to be laid before parliament. Assisted by three Judges and the Attorney and Solicitor General, the Privy Councillors selected, after an examination of many witnesses, did make a report which showed that there were serious defalcations in the Masters' offices, and that there was a grave case of suspicion against the Lord Chancellor. His Lordship thereupon, in the hope of setting himself right with the public, immediately issued a very stringent order by which every Master was ordered to send all the trust-monies and securities in his hands to the Bank of England, in a chest under three locks, one to be kept by the Master himself, another by the Six Clerks of the Court of Chancery, and the third by the Governor of the Bank.* But this was considered rather an acknowledgment of past misconduct; the storm of indignation rose higher against the Lord Chancellor, and loud declarations were made that he could not decently occupy the judgment-seat longer till the charges against himself where investigated. The Ministry becoming afraid of being suspected of a wish to screen a guilty colleague, Lord Macclesfield was compelled to surrender the

* 17th December, 1724. 1 Sanders, 465.

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Jan. 7. 1725. He is dismissed. Great Seal in commission. King's speech to the Lords Commissioners.

office of Lord Chancellor. Sir Peter King, Chief Justice of the Court of Common Pleas, was appointed to officiate as Speaker of the House of Lords, and the Great Seal was put into commission. When the Lords Commissioners—Sir Joseph Jekyll, Sir Geoffrey Gilbert, and Sir Robert Raymond were sworn in before the Council, it was published to the world that the King thus addressed them:—"I have had such experience of your integrity and ability that it is with pleasure I now put the Great Seal into your hands. You are fully informed of the state of the accounts of the Masters in Chancery. I earnestly recommend to you the taking effectual care that entire satisfaction be made to the suitors of the Court, and that they be not exposed to any dangers for the future; and I have such confidence in the faithful discharge of the trust I now repose in you, that I am persuaded you will look narrowly to the behaviour of all the officers under your jurisdiction, and will see that they act with the strictest regard to justice and to the ease of my subjects."*

Hopes were entertained that this proceeding would tranquillise the public mind, and that it would be left to the Lords Commissioners to grant relief for past wrongs, and to make regulations to guard the property of the suitors for the future. But it was found that the deficit could not be made up without the interference of parliament, and many were of opinion that exemplary punishment should be inflicted on him who was considered the chief delinquent.

Jan. 21. 1725. Proceedings against Lord Macclesfield in the House of Commons.

Proceedings were originated in the House of Commons by a petition from the Earl of Oxford and Lord Morpeth, guardians of Elizabeth, Duchess Dowager of Montague, a lunatic, stating that large sums paid to a Master in Chancery on her account, had been embezzled, and praying such relief as the House should think fit. A debate arising, it was adjourned in the expectation of obtaining more information before any resolution should be passed. In a few days, the following royal message was brought down:—

* 8 Parl. Hist. 417.

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"His Majesty having reason to apprehend that the suitors of the Court of Chancery were in danger of losing a considerable sum of money from the insufficiency of some of the Masters, thought himself obliged, in justice and compassion to the said suitors, to take the most speedy and proper method the law would allow for inquiring into the state of the Masters' accounts, and securing their efforts for the benefit of the suitors: and his Majesty having had several Reports laid before him in pursuance of the directions he had given, has ordered the said Reports to be communicated to this House, that this House may have as full and as perfect a view of this important affair as the shortness of the time, and the circumstances and nature of the proceedings would admit of." *

Message from the King.

Soon after, Sir George Oxenden †, having made a long speech upon the enormous abuses which had crept into the Court of Chancery, chiefly occasioned by the magistrate who was at the head of that court, and whose duty it consequently was to prevent them, concluded by moving, "that Thomas, Earl of Macclesfield, be impeached of high crimes and misdemeanours." The motion was seconded by Mr. Doddington, who said, "the misconduct of the late Chancellor was of the most dangerous consequence, since most of the estates in England, once in thirty years, pass through the Court of Chancery." Mr. Pultney and Sir William Wyndham took the opposite side, chiefly on the ground that the Reports laid on the table were no sufficient ground for an impeachment, and that the Commons were bound themselves first to institute an inquiry. But an immediate impeachment was voted by a majority of 273 to 164, and Sir George Oxenden was ordered forthwith to present it at the bar of the House of Lords.

Lord Macclesfield impeached.

When he had performed this duty, he brought in a bill to indemnify witnesses who should give evidence respecting the

Feb. 13. 1725.

* 8 Parl. Hist. 415.

† He was said to belong to the Leicesterhouse party; and, certainly, the Prince's friends were eager in the prosecution, from the recollection that Parker had taken a strong part against the Heir-apparent for the King.

sale of offices in the Court of Chancery, and it speedily passed both Houses. Sir Philip Yorke and some of Lord Macclesfield's private friends made a feeble stand for him in the House of Commons, on a motion respecting the framing of the articles of impeachment, but were defeated, being bitterly opposed by Serjeant Pengelly, Sir Clement Wearg, and other Chancery lawyers, who considered that they had been personally ill-used by the late Chancellor.

In the Lords there was a smart debate on the question, whether the trial should take place at the bar of their own House, or in Westminster Hall? and a majority preferring the former, there was a strong protest signed by several Peers on the ground that all possible publicity and solemnity should be given to a proceeding of such national importance. Those who wished to render the prosecution effectual, wisely contrived to make it appear as much as possible a judicial inquiry instead of a theatre for rhetorical display.

Lord Macclesfield's trial.

The trial excited intense interest, and although very few could be admitted to be present, great crowds assembled in Palace Yard daily while it lasted. The charge not being capital, there was no Lord High Steward appointed. Sir Peter King, Lord Chief Justice of the Common Pleas, acted as Speaker of the House of Lords, and gave directions to the managers for the Commons and the counsel for the defendant, and afterwards pronounced sentence. The Peers wore their robes. The defendant was every morning called upon to appear, and had a stool placed for him within the bar.*

The trial began on the 6th of May, and lasted thirteen days, the House generally sitting from ten in the morning till nine in the evening, with adjournments, during pleasure, for refreshment. The principal managers for the Commons were Sir Clement Wearg, Solicitor General, Mr. Dodington, Mr. Onslow, and Lord Morpeth. Lord Macclesfield was defended by Serjeant Probyn, Dr. Sayer, and Mr. Strange. He himself took an active part in cross-examining the wit-

* When referred to during the trial, he was designated "The noble Earl within the bar." Peers on trial for treason or felony are placed outside the bar.

nesses, and arguing points of law, and, after his counsel had been fully heard, he addressed the House on the whole of the case.

Articles of impeachment.

The twenty-one Articles of Impeachment, in substance, charged him with selling masterships in Chancery when the office, being vacant, was in his own gift; with receiving large sums of money for agreeing to the sale and transfer of masterships from one Master to another; with receiving a large sum of money for agreeing to a sale and transfer of the office of clerk of the custodies; with conniving at the fraudulent practice of Masters paying for their places out of the suitors' money in their hands; with trying to conceal the delinquencies of an insolvent Master, who had absconded; with encouraging the Masters to traffic with trust money, and with advising them to conceal the frauds they had committed.

The formal "Answer" put in by the defendant disclaimed all corruption, and relied on law and usage.

Speech of the managers.

I will present to the reader a little specimen of the opening of the managers: "Will example plead for him? Surely, my Lords, there are none such: or if there were, what would that be but to defend crimes by their own blackness and malignity? as if a distemper were not to admit of any remedy, because it is general and contagious. But supposing, for argument's sake, there have been great persons, his predecessors, who have ventured upon small presents and gifts on such occasions, does it follow, with any colour or pretence of reasoning, those having been confined within the bounds of moderation, that the extortion of exorbitant sums to connive at outrageous oppressions, exceeding almost the fears of the oppressed themselves, should take shelter under the poor plea of precedent? Whence comes it, that example should have all the beauty of an angel where it should be shunned, and all the deformity of a fiend where it should be followed? Happy had it been for him who now excites our pity as well as our indignation, happy for the widows and fatherless whom his misconduct has reduced to want, had he copied his renowned predecessors in their wise and upright administration of justice.

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To what a low ebb would the virtue and reputation of this nation be reduced, if impunity could justify offences, and bribery should be called the fashion of the age? His Lordship, in his answer to the articles of impeachment, says, 'he did not sell offices; and that he only received presents from the persons on whom the offices were conferred.' There probably may be a difference between a present and a price; if there is, it is the latter his Lordship is charged with taking; a price fixed by his Lordship, insisted upon, haggled for, and unwillingly paid by the purchaser. Unfortunately, the price was greater than could possibly be given by one who was to be contented with the fair profits of the office, as was well known by the recipient, who, to make amends to the purchasers, connived at their paying that extravagant price from the money of the suitors with which they were intrusted; and indulged them, and encouraged them, and compelled them, to hazard the rest of that money in speculations which turned out to be disastrous. Against apparent extortioners and robbers we guard ourselves with a caution proportionable to the infamy of their characters; but when the sanctity of the laws and the ensigns of authority, designed to defend and protect us, are made use of to invite us into ruin, how sure and extensive must that ruin be? My Lords, the Commons have beheld, with the deepest concern, such corrupt practices in this high Court—such as have deformed the beauty of justice. The first magistrate in the state, who is invested with an extraordinary power to detect and punish fraud, becomes himself its fabricator and its patron. The guardian of orphans has proved their oppressor. The Keeper of the King's conscience prostitutes his own. He who ought to reform abuses and amend the laws spends his days and nights in an ignominious traffic with the best bidder. He who ought almost to be revered as a superior being above human frailty, and only presented to the imagination as dealing out blessings, is actually beheld employing the scales of justice in the business of a usurer."

Evidence.

The evidence was very long, and clearly established that Lord Macclesfield had sold masterships through his agent, Peter Cottingham; that he had received sums for consenting

to the transfer of others; that this mode of disposing of the office of master led to great abuse; that in several instances the suitors had suffered from the master becoming insolvent, and that Lord Macclesfield had taken great pains to conceal these abuses and losses from the public.

Transfer of a Mastership.

I will give from the examination of one or two of the principal witnesses a specimen of the manner in which in days of yore such negotiations were conducted: Master Bennet had agreed with Master Hiccocks to buy his office from him on obtaining the necessary consent of the Lord Chancellor to the transfer. Being now compelled under the indemnity act to disclose all that passed, he said, "I applied to Mr. Cottingham and desired him to let me know my Lord Chancellor's thoughts, whether he approved of me to succeed Mr. Hiccocks? Soon after that he told me he had acquainted my Lord with the message, and my Lord expressed himself with a great deal of respect for my father, and was glad of an opportunity to do me a favour and kindness, and that he had no objection in the world to me—but that 'there was a present expected, and that he did not doubt but I knew that;' I answered, 'I had heard there was, and I was willing to do what was usual;' I desired to know what would be expected; he said 'he could name no sum, and I might apply to my brother a master, and Master Godfrey who had recommended me, and they would tell me what was proper to offer.' I returned to Mr. Cottingham and told him 'I had talked with them about it, and their opinion was 1000*l.* was sufficient for me to offer, but I would not stand for guineas.' Upon this Mr. Cottingham shook his head, and said, 'That won't do, Mr. Bennet, you must be better advised;' 'Why,' said I, 'won't that do? I think it is a noble present.' Says he, 'a great deal more has been given;' Says I, 'I am sure my brother did not give so much, and I desire you to acquaint my Lord with the proposal.' Says he, 'I don't care to go with that proposal; you may find somebody else to go.' Says I, 'I don't know whom to apply to.' Says he, 'Mr. Bennet, sure you won't go to lower the price; I can assure you Mr. Kynaston gave 1500 guineas.' Says I, 'only acquaint my Lord with it, and if he insists on more I will consider of it.' Says he,

'there is no haggling with my Lord; if you refuse it, I don't know the consequence; he may resent it so as not to admit you at all.' Then I began to consider, and was loth to lose the office, and told him 'I would give 1500*l*.' He said 'Mr. Kynaston had given guineas.' Then I asked 'whether it must be in gold?' He said, 'in what way you will, so it be guineas.' On the 1st of June he desired me 'to come immediately, and to come alone and bring nobody with me, for my Lord would swear me in that morning.' Accordingly I went, and the first question Mr. Cottingham asked me was 'if I had brought the money?' I told him, 'to be sure, I should not come without it.' He asked me 'what it was in?' I told him 'in bank bills, one of 1000*l*. and the other 575*l*.' He took them up and carried them to my Lord: he returned and told me 'my Lord was ready to admit me.' I was carried up stairs, and in his bed chamber was I sworn as Master.'" The witness admitted that he neither should nor could have bought the place if he had not been to pay for it with the money of the suitors as he did.

Sale of a Mastership.

A still more amusing scene is presented to us by the evidence of Master Elde, who was to pay the Lord Chancellor a much larger sum as the office was vacant by death, and who was imprudent enough to carry a considerable portion of it in specie. In this instance the brokership of Cottingham was at first dispensed with, and the Chancellor in person saw and dealt with the purchaser, who swore as follows:—"His Lordship said 'he had no manner of objection to me; he had known me a considerable time, and he believed I should make a good officer.' He desired me '*to consider of it*, and to come to him again.' I came again in a day or two, and told him '*I had considered* of it, and if his Lordship would admit me I would make him a present of 4000*l*. or 5000*l*.;' I cannot say which of the two, but I believe it was 5000*l*. My Lord said, 'Thee and I,' or 'you and I (my Lord was pleased to treat me as a friend), must not make bargains.' He said 'if I was desirous to have the office he would treat with me in a different manner than he would with any man living.' I spoke to Mr. Cottingham, meeting him in Westminster Hall, and told him 'I had been

at my Lord's, and my Lord was pleased to speak very kindly to me, and I had proposed to give him 5000*l.*' Mr. Cottingham answered,—'GUINEAS ARE HANDSOMER!!!' I immediately went to my Lord's, being willing to get into the office as soon as I could. I did carry with me 5000 guineas in gold and bank notes. I had the money in my chambers, but did not know how to convey it;—it was a great burthen and weight, but recollecting I had a basket in my chambers, I put the guineas into the basket, and the notes with them. I went in a chair, and took the basket with me in my chair. When I came to my Lord's house I saw Mr. Cottingham there, and gave him the basket, and desired him to carry it up to my Lord. I saw him go up stairs with the basket, and when he came down he intimated to me that he had delivered it. When I was admitted, my Lord invited me to dinner and some of my friends with me, and he was pleased to treat me and some Members of the House of Commons in a very handsome manner. I was after dinner sworn in before them. Some months after I spoke to my Lord's gentleman, and desired him if he saw such a basket, that he would give it me back. He did so, *but no money was returned in it.*"

Next, I will give an extract from the evidence of *Master Thurston.*—He had agreed with Cottingham to buy a mastership for 5000 guineas, and being introduced to the Lord Chancellor, had a promise that he should be admitted in a few days, but a difficulty arose from an inquiry into his character and sufficiency for the office, insomuch that his admission was postponed, and the Lord Chancellor entered into a treaty for disposing of the office to another purchaser,—"which" said he, "gave me an uneasiness and put me upon an expedient that since I could not have ready access to so great a person as his Lordship, I went to Kensington one morning to wait upon the Countess of Macclesfield, and upon sending up my name and that I desired to speak with her, in a short time I had the honour of seeing her, and acquainted her that I was the person that my Lord had promised the office to, and I desired her to intercede with my Lord that I might be speedily sworn in. Her Ladyship said, 'She never did meddle in any affairs of a public nature.' I used

Bribe to Lady Macclesfield.

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several arguments with her, as that 'the thing was now public and in print, and it would be a great disappointment to me and might affect my character if my Lord did not think fit to admit me,' and I acquainted her Ladyship that 'I did not expect or desire to come in without the due present that is always esteemed the perquisite of the Great Seal.' Her Ladyship was prevailed upon to promise 'she would write a letter and acquaint my Lord Chancellor with it.' Before I went away from the room where I had the honour to be with the lady, I did leave upon the table bank notes to the value of 5250*l.*"— *Q.* "How were they directed?"—*A.* "I directed them TO THE COUNTESS OF MACCLESFIELD."—*Q.* "How soon after were you admitted?"—*A.* "Within two or three days at farthest I was admitted and sworn in." The witness then goes on to state that, from the misconduct of his predecessor, Master Borret, which could not have been unknown to the Lord Chancellor, he found the office in a state of the most dreadful confusion, the money of the suitors for which he became responsible having been abstracted, and he says, that if he had been fully aware of the whole truth, "instead of giving 5000 guineas for the appointment, he would have given 5000 guineas to avoid it." He added, however, "that some months after, and shortly before the complaints against the Lord Chancellor broke out, Lady Macclesfield sent for him, and returned him 3250*l.*, saying 'she did not know he had left so large a present,—that it was too large a present,—that she was afraid my Lord Chancellor would come to the knowledge of it,—that the largest part must be taken back, and that she would appropriate the rest to her own use.'"

State of Mr. Borret's office.

Godfrey, another witness, gives a most lamentable account of the state in which he found the office of Master Borret, who seems to have died suddenly:—"We found his papers in great confusion, lying without any method or order. We collected them as well as we could, and what things we found of value or belonging to the suitors as Goldsmith's notes, we put them on a file, and that file, together with other little moveables we found belonging to him, as rings and a watch, were all put in a bag, and we put them into a trunk, and locked them up, and they are now at my house." Master

Borret had speculated deeply in the South Sea, with the suitors' money in his hands, and thinking at one time to increase the amount twenty fold for his own benefit, the whole of it was lost. Master Dormer and other Masters had followed his example with the like hopes and the like result.* When the defalcations were first discovered, it was proved that the Chancellor compelled all the Masters, under a threat of depriving them of the use of the suitors' money, to contribute to make them up, but from the increasing amount reparation and concealment became impossible.

Speech of counsel for the defendant.

The managers having finished their evidence on all the articles, and summed up at great length, the counsel for the defendant thus addressed the House:—"The greatest respect must be shown for a prosecution by the Commons of Great Britain, but (with all respect be it spoken) they have in this instance mistaken their course, and instead of proceeding legislatively to remedy a defective state of the law, and asking your Lordships to concur with them in prospectively amending a system which is supposed to lead to abuse, they have been misled by public clamour to appeal to this House as a court of justice, and to call for punishment where there has been no offence. The managers have utterly failed in making out the inflamed and exaggerated case which they opened, and we might well contend that the moderate sums which were spontaneously given to the noble Earl within the bar, by the competent and respectable persons who were appointed by him to be Masters in Chancery, were "presents" only. Yet, assuming that they were the "price" received upon the sale of offices, he must be acquitted, unless the sale of these offices was forbidden by the common law, or is contrary to an act of parliament. There is no pretence for saying that it is *malum in se*,—that the practice is so much against morality and sound policy that it cannot be endured in any well regulated state. He that has an office in his gift, if he takes care that the duties of it are faithfully performed, may dispose of it as he may of any thing else that is valuable,

* It is well for the Masters that they are no longer exposed to such temptations, or it might have been suspected that they engaged in "Railroad speculations"—as seducing as the "South Sea."

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on such terms as may be agreed upon between himself and the person on whom it is to be bestowed. The receiving of money for it is no act of injustice to the person appointed, for he had no right to it, and his advancement is owing to the favour of him who has the power of nomination. If the office be valuable, so is the right of nomination to it,— which may be considered part of the estate of that person to whom it belongs. Of whatever nature the offence may be, the consequence does not follow that its duties will not be adequately performed because a consideration has been paid for it. The Roman Civil Law, the great fountain of justice, which humanised the barbarous hordes of the North, permitted the sale of offices. In France justice is administered with great purity, and her Parliaments boast of magistrates equal in learning and integrity to any that have ever graced the bench in Westminster Hall; yet in that country the highest judicial offices may be transmitted to heirs, or may be resigned during life to a purchasing successor. Our own records present many instances of the highest offices in the administration of justice being exposed to sale, and openly, and avowedly, and without censure or scandal, purchased from the Crown. With us the distinction has always been preserved between the sale of justice and the sale of judicial offices; and while the former has been condemned, the latter has been tolerated. In the time of King Stephen, 'Richard Fitz-Allured fined fifteen marks of silver that he might sit with Ralph Basset, the King's Justiciar, to hold the King's Pleas,' or as we should say, 'to be a puisne Judge of the Court of King's Bench,'— and an entry is made of the receipt of the money as part of the ordinary revenue of the State. So in a subsequent reign there is an inrolment in the public records still extant, showing that the office of Lord Chancellor itself was sold: *Gualterus de Gray dat Domino Regi* 5000 *marc. pro habendâ Cancellariâ Domini Regis totâ vitâ suâ, et pro habendâ inde chartâ Domini Regis.* * Lord Coke has censured this transaction; but Walter de Gray enjoyed the office, and the open announcement of the price he paid for it shows that

* Mad. Exch. 743.; and see ante, Vol. I. c. vi.

there was no horror excited by the sale of offices in the times when the common law took its origin. The very dictum to be found elsewhere against the sale of the Chancellorship, proceeds on the ground that, being partly of an ecclesiastical nature, the sale of it might savour of simony,—and being treated as an exception, it proves the rule. But the statute 6 Ed. 6. c. 16. to inflict a penalty upon the sale of certain offices concerning the administration of justice — so much relied upon by the managers — is decisive against them with regard to their argument on the common law; for it provides that 'this act shall not extend to any contract made before the 1st of March then next,' — and farther that 'this act shall not extend, or be prejudicial to any of the Chief Justices of the King's courts, commonly called the King's Bench or Common Pleas, or to any Justices of Assize, but that they, and every of them, may do in every behalf, touching and concerning any office or offices to be given or granted by them, as they or any of them might have done before the making of this act.' By virtue of this proviso, the offices of Master in the King's Bench, of Prothonotary in the Common Pleas, of Clerk of Assize, are at this day openly and avowedly sold by the ermined sages who now sit upon the woolsacks in your Lordship's house, to advise you whether the sale of offices be a misdemeanour by the common law of England. It comes then, my Lords, to the construction to be put upon the enacting clause of that statute. Now this being a penal statute, it is not to be extended by implication, and as it creates a new offence, no punishment can be inflicted for that offence, except of the nature — to the degree — and in the manner which the statute specifies: it contains no general prohibition of the sale of offices — but merely inflicts a particular penalty on those who buy or sell offices which are not excepted from its operation. The contract made between the buyer and seller is declared void; the party selling loses his estate and interest in the office, and the party buying is rendered incapable to hold and enjoy it. There is no maxim of English law better established, that when a statute appoints a penalty for doing a thing which before was inno-

cent, and points out how the penalty is to be imposed, the offence is to be punished in that way and no other.* We deny that this office comes within the purview of the statute, or that the noble Earl has sold it; but at all events, the statute only inflicts upon him the penalty of forfeiting the nomination to it for the future;—and that he has already suffered by the loss of the Great Seal;—so that he is liable to no other punishment, and the present impeachment cannot be supported. But it is painful, and humiliating, and unnecessary, and improper to resort to such technical reasoning, for neither morally nor legally has the noble Earl committed any offence. The best proof that the practice is neither against common law nor statute law is, that it has been invariably, and confessedly, and notoriously followed by all his predecessors — which we do not urge to palliate violation of duty — but to show that no duty has been violated. Many most pure and upright men have sat in the marble chair since the statute passed, and all of them, without any public censure, and without any self-reproach, have received gratuities on disposing of these offices — and with as little hesitation, and as little secrecy as they have received their fixed fees or their annual salary. Nay more, where Chancellors have been impeached in factious times (as in the instances of Lord Clarendon and Lord Somers), and there was the most eager desire to bring them to shame — among all the frivolous charges preferred against them, no political opponent, no furious zealot, no private enemy ever thought of accusing them of corruption, because they had conformed to the usage of selling offices in their court. Should this now be adjudged criminal, what numbers of good and just men now sleeping in their honoured graves are to be exhumed and put upon their trial, and condemned as criminals? Your Lordships are called upon to spread an universal cloud of reproach and infamy over venerable sages of the law, some of them the ancestors of illustrious Peers now present, — men whose memories have hitherto been considered sacred, and have not only been fondly cherished by their descendants, but have been dear to their country — men who despised riches

* Castle's case, Cro. Jac. 644.

and hated covetousness, who would have shrunk with abhorrence from every appearance of corruption, and who, without ostentation, were famous in their day for acts of benevolence and charity. Till within a few short months the noble Earl within your bar was equally respected, and every one believed that he too would go down to the tomb regretted and revered. His public services require no panegyric. We might appeal to those gentlemen who are now managers against him, whether they have not often applauded him with warmth, whether they have not loudly commended his zeal and intrepidity in the cause of liberty and our country — his steady adherence to the Protestant succession — his disinterested and patriotic conduct in moments the most trying? Did they not love as well as praise him? Have they not celebrated his noble refusal of the Great Seal itself when the acceptance of it would have been inconsistent with his principles? and when they saw him honourably placed in the high station which he lately adorned, did they not rejoice in his elevation as their own security and happiness? This once was the Earl's character; this once his merit. What has he since done to have his name branded to all posterity as guilty of judicial corruption? He has administered justice between party and party as Chancellor (all allow) in a manner as able and as upright as the most distinguished and most virtuous of his predecessors. He has not introduced a new system with respect to the disposal of offices in his court. Consider the difficulties which beset such attempts at reform — the vested interests which must be affected — the hardships which must be inflicted on individuals and families — the misconstruction to which the reformer is exposed, and the odium which he is sure to incur. But, my Lords, if the noble Earl be thought wanting in energy, if he ought to have been more active in improving our institutions, is not this rather matter for the criticism of the historian or biographer, than to be made the foundation of an indictment before a grand jury, or an impeachment before this august assembly for high crimes and misdemeanour? Then, my Lords, remember how the noble Earl has employed the wealth he has acquired, and consider whether so to employ it he would acquire it by the com-

mission of a crime. It was a cruel application by one of the managers of a well-known maxim, that 'a man may be profuse of his own while he greedily grasps the property of others.' But how has the noble Earl been profuse?—in relieving the needy and the oppressed — in assisting poor scholars,—in patronising obscure merit wherever he could find it out,—in liberally contributing wherever a benevolent object was to be gained by the joint efforts of the charitable. Are you necessarily to infer that he was 'unsatisfied in getting' because 'in bestowing he was most princely?' Hard, indeed, is the condition of the Earl, when his very virtues, when his most commendable actions are turned to his disgrace — are wrested into instruments to achieve his ruin. He who has 'a hand open as day for melting charity' you are required to believe must necessarily be guilty of corruption and extortion. Such is the reasoning of his accusers, but he has your Lordships for his Judges."

Lord Macclesfield's conduct during the trial.

The noble defendant, during the disputes about evidence, spoke to the managers rather contemptuously, and at last drew forth this remonstrance from Onslow: "The managers cannot but observe the indecent behaviour of this Lord, and his unworthy manner of treating us. We do not think the Lord at the bar should be directing the managers as if he sat in his place as Judge. We are here advocates for all the Commons of Great Britain, to demand justice against him." I must acknowledge that the whole trial was conducted by them in a good spirit, and in a very business-like manner — while every now and then the sharp country attorney could be discovered under the disguise of the Earl.

Evidence for the defendant.

Witnesses were called to make out the usage relied on. However, only three instances of the sale of the office of Master were established — one in Lord Cowper's time, and two in Lord Harcourt's; the largest amount received being 800*l.*, and the money having been paid in every instance out of the private funds of the parties before their admission, without any meddling with the money of the suitors. To account for the larger sums paid to the defendant for Masterships, he proved that other offices in the Court of Chancery, particularly those of the sworn and

waiting clerks, had greatly risen in price of late years. He further proved that he had himself contributed 1000*l.* to make up the deficiencies of a Master, and that he had given away large sums in charity.

His speech in his own defence.

Before the Commons replied, he begged permission himself to address the House, and several days were given to him to prepare. His speech was a very masterly performance, but was confined to a minute analysis of the evidence which would now be uninteresting and unintelligible. He went over all the twenty-one Articles of the impeachment, and tried to show that they were all unsupported. He thus concluded, perhaps with more dignity and a better chance of a favourable result, than in the most laboured peroration: "My Lords, having thus gone through all my observations, it may be expected that I should close them by offering something in general: but I think it proper to forbear. I am not conscious myself that it is necessary in this case to apply to the passions, which is a common artifice to assist a weak defence. If I have done any public or private good, (of which last some specimen has been laid before your Lordships,) it will, I am confident, have its full weight. I submit my whole life and conduct to your Lordships' judgment; and rely entirely on your justice for my acquittal."

He is unanimously found guilty.

At last, on the 25th of May, ninety-three Peers being present, the Earl being placed at the bar and the Commons attending, Lord Chief Justice King put this question severally to every Peer, beginning with the junior, "Is Thomas Earl of Macclesfield guilty of High Crimes and Misdemeanours charged upon him by the impeachment of the House of Commons, or Not guilty?" and the unanimous answer of all was, "Guilty, upon my honour." *Lord Chief Justice King.* "My Lords, your Lordships have unanimously found Thomas Earl of Macclesfield guilty of high crimes and misdemeanours charged upon him by the impeachment of the House of Commons." The defendant was then called upon to appear at the bar to hear the verdict, but the Duke of Devonshire, the Lord President, signified that he was so much indisposed that he was unable to attend. He appeared

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at the bar the following morning, when the verdict was solemnly intimated to him. He then attempted to make a speech in exculpation of his conduct, but being interrupted by the managers, he threw himself on the mercy of the House. He was immediately ordered into the custody of the Gentleman Usher of the Black Rod; and the Lords proceeded to consider what sentence should be passed upon him.

A friendly motion was made, that the opinion of the Judges be asked, "whether the sale of an office that hath relation to the administration of justice, be an offence against the common law?" but it met with no encouragement, and was negatived without a division. All then agreed that he should pay a heavy fine, to be applied towards the relief of the suitors who had suffered from the insolvency of the Masters in Chancery, and the sum was fixed at 30,000*l.*

The sentence on Lord Macclesfield.

The grand question was, whether he should not likewise be disqualified to hold any place or employment in the state or commonwealth, upon which there was a long and animated debate, one side insisting that the loss of his office of Lord Chancellor, the heavy costs of his defence, the anxiety he had suffered, and the disgrace cast upon him, together with the proposed fine, would be punishment enough, considering the example set him by his predecessors; while the other contended, with great vehemence, that, according to invariable precedent and clear reason, a person who, upon an impeachment by the Commons, had been convicted of corruption in a high judicial office, should, for the protection of the present generation, and as a warning to posterity, be effectually prevented from filling the seat of judgment which he had dishonoured; and they pointed out many circumstances to show that this was an aggravated case, which would be most inadequately punished by a mere pecuniary fine. On a division, the numbers were equal, 42 to 42, — so, according to the rule of the House of Lords — *præsumitur pro negante* — the motion was lost. Then violent protests were drawn up and numerously signed against this decision.—Still the sentence was not to be pronounced till judgment was prayed by the Commons.

Thanks to the managers.

The managers immediately received the unanimous thanks of their House by Speaker Compton, who said to them: "You have maintained the charge of the Commons with a strength of reason and beauty of expression, which would have gained you the highest applause in the most flourishing Grecian commonwealths:

> —— "Nec dignius unquam
> Majestas meminit sese Romana locutam."

You have stopped the cries of orphans, and dried up the tears of the widow; even those who must ever be insensible of the benefits they receive — idiots and lunatics (and such only can be insensible of them) — will be the partakers of the fruits of your labours." He went on more particularly to thank them for having shown that the power of impeachment vested in the Commons might be practically used for the good of the people, and that "the sword of vengeance which, when drawn by party-rage, when directed by the malice of faction, or wielded by unskilful hands, has too often wounded that constitution it was intended to protect, had, by their able management, turned its edge to its proper object, and had struck down a great public offender."

Motion in favour of Lord Macclesfield in the Commons lost.

There was a party in the Commons, however, disposed to a mild course. They said that enough had already been done for the public, by exposing the long-established abuses of the Court of Chancery, and that the Earl of Macclesfield ought not to be made a scape-goat. They therefore resisted the motion that the Speaker be ordered to go to the bar of the House of Lords and demand judgment; but upon a division this motion was carried by a majority of 136 to 65.

The Speaker prays judgment.

Accordingly, on the 27th of May, Speaker Compton, attended by many members of the House of Commons, presented himself at the bar of the House of Lords to demand judgment. The Lord Chief Justice King thereupon directing the gentleman usher of the Black Rod to produce his prisoner, the Earl of Macclesfield was marched in, and, after low obeisances made, knelt until the Lord Chief Justice told him he might rise.* The Speaker of the House of Com-

* The Commons' Journals most studiously record, that the Serjeant at Arms

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mons then having recited the Impeachment, and the proceedings, thus concluded: "I do, therefore, in the name of the knights, citizens, and burgesses in Parliament assembled, demand judgment of your Lordships against Thomas Earl of Macclesfield, for the said high crimes and misdemeanours."

*Lord C. J. King.* "Mr. Speaker, the Lords are now ready to give the judgment you demand. Thomas Earl of Macclesfield, the Lords having unanimously found you guilty of high crimes and misdemeanours charged on you by the impeachment of the Commons, do now, according to law, proceed to judgment against you, which I am ordered to pronounce. Their Lordships' judgment is, and this high Court doth award, that you, Thomas Earl of Macclesfield, be fined in the sum of 30,000*l.* unto our Sovereign Lord the King, and that you be imprisoned in the Tower of London, and there kept in safe custody, until you shall pay the said fine." The Earl of Macclesfield was immediately carried off by the gentleman usher of the Black Rod, and delivered into the custody of the Constable of the Tower of London. Here he was confined in the room which had been last occupied by his opponent the Earl of Oxford. Three days after, the King (it is said, with a sigh,) ordered his name to be erased from the list of Privy Councillors.

Justice of the sentence.

There has been a disposition in recent times to consider that Lord Macclesfield was wrongfully condemned. "The unanimity of his Judges," says Lord Mahon, "might seem decisive as to his guilt; yet it may perhaps be doubted whether they did not unjustly heap the faults of the system on one man; whether Parker had not rather in fact failed to check gradual and growing abuses, than introduced them by his authority, or encouraged them by his example."* I must say, that although it is impossible not to pity a man of such

attending the House of Commons stood at the bar on Mr. Speaker's right hand, with the mace on his shoulder; and that the Earl of Macclesfield, being placed at some distance on his left hand, was ordered to kneel "in the presence of the Commons."

* Vol. ii. 106.

high qualities when so disgraced, and it must be acknowledged that, with good luck, notwithstanding all that he did, he might have escaped exposure and preserved an untarnished fame, yet, in my opinion, his conviction was lawful, and his punishment was mild. There can be no doubt that the sale of all offices touching the administration of Justice (with a strange exception in favour of Common Law Judges), was forbidden by the statute of Edward VI., and every Chancellor who afterwards sold a Mastership in Chancery must have been aware that he was thereby violating that statute. It is a fallacy to say that he was fully justified by the example of his predecessors. Lord Cowper had abolished "New Years' Gifts" from the officers of the Court as well as from the bar, and had been followed in the same course by Lord Harcourt, —both Chancellors showing a desire to conform to the improving spirit of the age. In Lord Macclesfield's time, from the speculations caused by the South Sea mania, the abuses in the Masters' offices had become more flagrant. But instead of trying to redress them, he increased their enormity by raising the price which the Masters were to pay for their places, and rendering it still more necessary that, for their own indemnity, they should traffic with the trust-money in their hands. Whoever takes the trouble of perusing the whole of the evidence will see that he was rapacious in his bargains, and that, with the view of bolstering up a system which was so profitable to him, he resorted to very arbitrary means to keep the public in ignorance of its consequences. His contemporaries could form a more correct opinion of his conduct than we can, and we should be slow to accuse them of harshness.

There is no pretence for saying that he fell a sacrifice to party resentment. It so happened that, at the time of his impeachment, party had actually disappeared in both Houses of Parliament. The two Law Lords, Lord Harcourt and Lord Lechmere, were present, and concurred in the verdict. High Churchmen must, no doubt, have rejoiced to see disgrace fall upon him who had gained distinction as the prosecutor of Sacheverell, but many zealous Whigs actively, though sorrowfully, joined in the prosecution. The Prince's

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friends were exasperated against him, but the King's friends joined in the sentence. Walpole did gain great credit by allowing the prosecution fair play; but he neither originated nor unduly encouraged it. Macclesfield had been a useful and submissive ally of the existing government, and there was no rival whom they desired to elevate in his place. Of all the impeachments recorded in our annals, I find no one marked by more honesty of purpose, more practical ability in the manner in which it was conducted, or more utility to the public in its result.

The mob were most highly delighted — and would have been still more pleased if, in his procession to the Tower, he had been attended by an axe with its edge turned towards him. In his way thither his ears must have been saluted with ballads which were sung in the streets, comparing him to Jack Shepherd, Jonathan Wild, and other famous freebooters, and giving him the preference over all in infamy, as, instead of rich travellers and stout wayfaring men, he robbed widows and orphans who were put under his care.*

Lord Macclesfield in the Tower.

He remained a prisoner six weeks, while he made arrangements for the payment of his fine. The money was at last raised, and in pursuance of an address from the House of Commons to the Crown, was paid into the Court of Chancery to be applied towards making good the losses of the suitors from the misconduct and insolvency of the Masters.

* The best apology I have met with for Lord Macclesfield is by Oldmixon — which, lest I should be supposed to have treated a great man harshly, I, in fairness, subjoin: "There had been for some time a murmuring against the insufficiency of the Masters in Chancery to answer the great sums lodged in their hands by the suitors in that Court; and it was suspected, that the large sums they paid for admission into their places, made their way more easy than it ought to have been, and very much lessened the inquiry into their qualifications for them. 'Tis true, this abuse had been long growing up to this enormity, and there was hardly any commodity in a market bought and sold more freely and openly than a Master in Chancery's place. The suitors' money, with which they paid no interest, brought them in great interest from the funds; and the profits of the place being consequently doubled and trebled at least to what they were, before there was such an opportunity to enrich themselves by the advantage they made of the money they had in their hands. 'Tis no wonder the Lords Keepers and Lords Chancellors doubled and trebled the price they were to pay for admittance, which had risen from 1000*l*. to 3000*l*. in my remembrance; who, being intimate with several of them, have heard this matter frequently discoursed of before there was any whisper of imputing it as a crime to the Lord Chancellor. But from a complaint in general, it came to a charge in particulars; and the Earl finding it was impracticable for him to prevent it, or keep the Great Seal under it, he resigned his high office" — Vol. iii. 758.

The King being told that it was chiefly for fidelity to himself, in taking part with him against the Prince, that the Chancellor had been prosecuted, had signified to him by Sir Robert Walpole his intention to repay him the amount of the fine out of the privy purse as fast as he could spare the money, accompanying the message with gracious expressions of his sympathy and continued favour. One instalment of 1000*l.* was thus actually paid to him soon after, and the following year he received an intimation that he might receive 2000*l.* more from the royal bounty whenever he chose to apply for it. Not wishing to appear too eager to avail himself of such generosity, he had abstained from making the application till the sad news arrived of the death of George I. in Germany. Lord Parker, his son, then hurrying to Sir Robert Walpole to clutch the money, received for answer, "that his late Majesty and his minister had a running account which had not been settled, and as there was no saying on which side the balance was, it would be running too great a risk to pay the 2000*l.* at present." Some shrewdly conjectured, that Sir Robert expected to ingratiate himself with the new King by thus treating the man who had rendered himself so obnoxious to his Majesty when Prince of Wales. However that may be, not another farthing from the funds of the late King could be extorted towards the payment of the fine.

**Letter from Lord Macclesfield to Sir Peter King.**

The very day after Lord Macclesfield's commitment to the Tower, he wrote the following letter to Lord Chief Justice King, who had presided as Speaker of the House of Lords during his trial, and was now designated as his successor:—

"My Lord,

"Will y^r^ Ldp have y^e^ goodnesse to forgive me if, to y^e^ trouble I have already given, I adde this more in favour of Mr. Thomas Parker of New Inne, who served me as Deputy Purse-bearer severall y^rs^. He is a very sober, honest, and sensible man, and who I am sure will serve y^r^ Ldp very diligently and faithfully if you have occasion to employ him

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in any of y^e^ offices belonging to y^e^ Great Seal. If these are all provided for, give me leave to recommend him to be one of y^e^ Comm^rs^ of Bankrupts. He was in one of y^e^ lists, and behaved himself very well, but when I made him Deputy Purse-bearer I put an^r^ in y^e^ list of Comm^rs^, by w^ch^ means his name stands not now amongst those Comm^rs^. There is another Thomas Parker of y^e^ Temple, whom y^e^ Lords Comm^rs^ have been pleased to continue in, and I beg y^r^ Ldp still to allow a place amongst them. I ask pardon for this presumption, and I heartily wish y^r^ Ldp all happinesse and satisfaction in an office w^ch^ my want of discretion has made so fatall to me, but w^ch^ I am sure by y^r^ Ldps great prudence and caution, will, in y^r^ hands, be an honour to yourself and a blessing to y^e^ King and his people, and I wish it may long continue so happily placed.

"I am with the greatest respect,
"My Lord,
"Y^r^ Ldps most humble
"and most obed^t^ Serv^t^,
"MACCLESFIELD."*

This letter, written under such circumstances, to intercede for two dependents, and probably poor relations, places him in a very amiable point of view; and as he had not committed any black crime for which he could be expected to feel deep remorse, he may be forgiven if he imputes his fall to "want of discretion," and intimates that along with the qualities for the office which he himself possessed, "prudence and caution" only were required to insure a glorious career to his successor.

I have no further means of judging of the manner in which the fallen Chancellor bore his reverse of fortune, or how he spent his time in the Tower. He could have had none of the sympathy felt for political martyrs, which had often made a commitment to its cells a triumph rather than a disgrace, and few visitors, besides his near relatives and dependents, could

* From the MSS. of the Earl of Lovelace. The letter is without date, to avoid any reference to the writer's "doleful prison in the Tower;" but it is endorsed by Sir Peter King, "28th May, 1725."

have come to relieve his thoughts from sad retrospects and anticipations.



He is liberated.

When restored to liberty, he had not the courage to try to recover his position as a public man or in private society. Although he had still a vigorous constitution of body, and his faculties were unimpaired, he could not face political opponents or friends under whose unanimous verdict he had dropped on his knees to receive sentence as a fraudulent criminal at the bar of that House in which he had long presided with dignity and splendour. He considered the last division on his case, although the motion was lost by an equality of votes, as tantamount to sentence of civil death. He never took his seat in parliament, or appeared in public, or took any interest in party struggles.

He retires into the country.

As soon as his private affairs were settled in London, he hurried to bury himself in obscurity in the country. He selected as his retreat a small house near Derby, which had belonged to him when he carried on business as an attorney in that town. Here he entirely shut himself up from society, neither mixing with his former intimates in the lower or middling ranks of life, nor with the aristocracy to which, in point of rank, he now belonged. Some years afterwards he made occasional visits to his son, who had a house in London in Soho Square, but on these occasions he still shunned all intercourse with the world. His old age, I fear, was very cheerless. "Obedience" and "troops of friends" which he had enjoyed, he could look to have no longer.

His listlessness in retirement.

Unfortunately he was unable to imitate the conduct of his predecessor, Bacon, who, under similar circumstances, devoted himself to science, and the extension of his literary fame. Macclesfield, when educating himself, had acquired an adequate knowledge of the Latin classics, and had read the most popular English authors; but he had no high value for literature, and he had no taste whatever for philosophy. He now probably regretted that he ever left the profession of an attorney, in which, if he had been contented to continue, he might have lived and died respected, though obscure. But the mind wonderfully adapts itself to circumstances, and in the saddest condition solace is found. As he had

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hastened to be rich, a large fortune remained to him after the payment of his fine, and his latter days may have been rendered tolerable by the pleasures of avarice.

At the commencement of his seclusion he took interest in superintending the education of his son, afterwards so famed for scientific acquirements, and for his sake he maintained in his house a mathematician of great eminence, but little wealth, the father of Sir William Jones, the celebrated lawyer, orator, poet, classical scholar, and orientalist.

His last illness.

In this state of listless existence, Lord Macclesfield languished nearly seven years. At last, on the 28th day of April, 1732, he was relieved from his sad reflections on the sale of masterships, and from the wretchedness of non-official life. While at his son's house in Soho Square he had a severe access of strangury—a complaint from which he had before often suffered, but which was now so violent and painful, that he was immediately impressed with the conviction that it would prove mortal. His mind being weakened to superstition, he foretold that "as his mother had died of that disease on the eighth day, he should do the same." On the morning of the eighth day, he declared that he felt himself "drowning inwardly, and dying from the feet upwards." He is said to have received, in a very exemplary manner, the consolations of religion, and to have taken leave of his family and household with the same calm cheerfulness as if he had been setting out upon a journey with the prospect of a speedy re-union with those he loved. A little before midnight, being informed that the physician was gone, he said faintly "and I am going also, but I will close my eyelids myself." He did so, and breathed no more. Thus, in the sixty-sixth year of his age, he piously closed a career long eminently prosperous—at last deeply disastrous. Who can tell whether he would have made so good an end if cut off without having experienced any reverse?

His pious end.

His death.

> ——"to add greater honours to his age
> Than man could give him, he died fearing God."

He had constructed a family vault in the church of Shirbourn in Oxfordshire, and there he lies interred without monument or epitaph.

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His rise and character.

The subject of this memoir is a striking instance of the scope afforded by our constitution to talent and energy. He was not suddenly elevated by the caprice of a despot from a servile condition to rule the state. The possibility of such a promotion shows an arbitrary form of government, and a barbarous state of society. The power of rising to distinction in a free country ought to be by the possession of useful qualities, and the performance of public services. The government that employs and rewards the meritorious aspirant, ought merely to ratify the opinion of his fellow-citizens, and to carry into effect the wishes of an enlightened community. Parker got on in the world first by diligence in his father's little office at Leake, and rendering services to the wealthy manufacturer who translated him to Derby;—then by showing himself superior in intelligence and activity to the other attorneys of that place;—then by being the greatest winner of verdicts of all the barristers on the Midland Circuit;—then by proving the most formidable opponent which Westminster Hall could supply to oppressive prosecutions of the press by the Attorney-General;—then by becoming in the House of Commons a most efficient member of the great party to which he attached himself;—then by gaining the chief glory in a great parliamentary prosecution, having for his competitors the most eminent lawyers and statesmen of the day;—then by being acknowledged equal as a Judge to those who had filled with the greatest applause the highest judicial stations;—then by taking a leading part in the Upper House of Parliament, when he was elevated to the peerage;—and finally, by making it appear for the interest of the Sovereign on the throne to place him in the highest civil office which a subject could hold—at a time when he had established such a reputation with all ranks, that his promotion caused general joy.

Avarice his bane.

He achieved greatness; but for solid glory he wanted a contempt of riches, a love of literature, and a desire of improving the institutions of his country. He could occasionally part with money for charitable purposes, but beyond the laudable desire of providing decently for his family he cer-

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tainly displayed an inordinate desire to accumulate wealth, and this was the remote cause of his downfall.

Without taste for literature or legal improvement.

While Somers, and Harcourt, and Cowper were familiar with the greatest contemporary poets, and are immortalised in their verses, Macclesfield preferred the conversation of Judges and Serjeants, and his name is to be found in doggrel ballads, recording his disgrace. He had a noble opportunity of serving the state and enhancing his own fame by law reforms which were loudly demanded; but in neither House of parliament did he ever introduce any measure to supply a defect or to correct an abuse in the administration of justice, and for his personal advantage he aggravated crying evils, which in his time had brought such obloquy on the Court of Chancery that suitors were said to be "inveigled and delayed there that they might be plundered."

Lord Macclesfield as a politician

As a politician he deserves unqualified praise, for he was the steady, zealous, and consistent friend of civil and religious liberty. I am afraid he intrigued with the Hanoverian party against Lord Cowper; but when he had gained his object, and was placed on the woolsack, notwithstanding the grants of money and honours for which he struggled, I know not that he said or did any thing at variance with his former principles or professions. On one occasion it should be mentioned that he appears in favourable contrast with his predecessor, for he warmly supported the government bill for placing churchmen and dissenters on an equal footing with respect to civil rights, while Lord Cowper defended the Test and Corporation Acts, and was the means of their being continued on the statute book for a century.

His contempt for authorship.

He despised authorship, and not only never contributed a paper to the "Tatler" or "Spectator," but never even wrote a political pamphlet in an age when almost every one engaged in party strife sought to influence public opinion by pamphleteering,—daily newspapers not being yet established, and the publication of parliamentary debates being not only forbidden but prevented. As far as we know, he did not even keep a Diary, like Lord Cowper and Lord King. His autobiography would have been one of the

most curious ever given to the world, both in his rise and in his fall.

Publication imputed to Lord Macclesfield for improving the Universities.

One publication was imputed to him while he held the Great Seal—but not on sufficient grounds—"A Memorial relating to the Universities,"—the author of which sets up for a great reformer of academical education — with a view less to scholarship than to cure the Heads of Houses and Fellows of the Jacobitism by which they were almost all supposed to be then tainted. According to his plan they were to be appointed by the great officers of state and some bishops, and were to be enticed into the world by a liberal dispensation with their residence in college. He likewise recommended, after the model of the Scotch Universities, professorships of logic, moral philosophy, experimental philosophy, and chemistry, which all the students should be compelled to attend. Thus were those seats of learning to be made more useful to the nation, and the men who frequented them were to become better affected to their King and country.

Praise of Lord Macclesfield by Hughes.

Although Lord Macclesfield had no relish for literary society, and was never admitted of the Kit-Cat, looking with far more admiration on nisi prius leaders and equity draughtsmen than on the wits at Button's,—to comply with the fashion of the age, he rather affected the reputation of being a patron of literature. We have seen that, at the request of Lord Cowper, he retained Hughes in his employment as one of his secretaries, and he showed him further kindness—for which he was thus on his birth-day saluted by the poet:

"Not fair July, tho' plenty clothe his fields,
Tho' golden suns make all his mornings smile,
Can boast of aught that such a triumph yields
As that he gave a Parker to our isle.

"Hail, happy month! secure of lasting fame!
Doubly distinguish'd thro' the circling year;
In Rome a hero gave thee first thy name,
A patriot's birth makes thee to Britain dear."

Lord Macclesfield's patronage of Zachary Pearce.

The very learned Zachary Pearce, when wholly unknown beyond the walls of his college, dedicated to Lord Macclesfield, when Chief Justice of the King's Bench, an edition of "Cicero de Oratore," displaying much learning and ability,

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and by his recommendation rose successively from a Fellow of Trinity, to be Chaplain to the Lord Chancellor, Rector of St. Martin's in the Fields, Chaplain to his Majesty and Bishop of Rochester. Indeed Lord Macclesfield's distribution of church patronage is represented as always disinterested and judicious.

He is placed in a very amiable point of view by the following letter written by him after his fall to his successor, Lord Chancellor King, in favour of his old school-fellow, Tom Withers:

Letter from Lord Macclesfield to Lord Chancellor King in favour of his old school-fellow, Tom Withers.

"My Lord,

"I have received a letter from one Thomas Withers, of Newport, in Shropshire, to desire your Lordship to appoint him master of the English school in that town, in the room of Thomas Sambrook, lately deceased. At his request I formerly obtained the place of my Lord Chancellor Cowper, for this Thomas Sambrook, who was his nephew; but he himself is now fallen into misfortunes, and begs the place for himself. And indeed he deserves much better. He was my school-fellow, and in the same form with me, in the Latin school, and was a very good scholar, and went quite through the school; but his father not being able to send him to the university, nor to get the assistance of friends for that purpose, took him to his own trade, which was that of a shoemaker, wherein he succeeded very well, and had the general esteem of the neighbouring gentlemen, and was a great favourite of the late Lord Bradford, who, if living, would have saved your Lordship this trouble. Just before I was made Chancellor I lay at Newport, and sending for the Master who had been usher when I was at the school, he told me of Tom Withers my old school-fellow, who was then in good circumstances, and gave me an extraordinary good character of him in all respects. I sent for him, and found he retained pretty well his Greek and Latin, though he made no show in conversation of either. He has since his misfortunes officiated sometimes for his nephew, whose health did not permit him to attend the school; and has ample certificates of his very good behaviour, which he (imagining me to be in

London) tells me he will order one to wait upon me with, and I will order to be laid before your Lordship if you care to be troubled with them. I beg pardon for taking up so much of your time, but I think the case so compassionate, and him so much the best man that can possibly be proposed for this place, that I could not forbear laying before your Lordship some of these particulars, as the opportunity I had of knowing so much of the person.

"I am with great respect,
"My Lord,
"Your Lordship's most faithful
"and obedient Servant,
"MACCLESFIELD." *

I have not been able to ascertain whether the application succeeded. It would have been pleasant to have known that Tom Withers reached the dignity of Head Master of Newport school, and that the Ex-chancellor visiting him there, they both for a time forgot all past misfortunes, looking at their names cut out on the old desks, and talking over their battles and boyish adventures.

I know hardly any thing more of Lord Macclesfield in private life. It is said that he was warm in his friendships, and generally accessible and affable. We read a good deal of his faults of temper; his manners appear to have been rough, both in society and on the bench, and I suspect that in his highest elevation he occasionally forced the bystanders to recollect his origin and his want of early education.

His descendants.

He married Janet daughter and co-heir of Charles Carrier of Wirkworth, in the county of Derby, Esq., and by her had issue, a son George, who survived him, and a daughter Elizabeth, married to Sir William Heathcote. The second Earl of Macclesfield was a celebrated mathematician, and became President of the Royal Society. He it was that, in the year 1751, so ably assisted in carrying through the bill for the reformation of the Calendar †, which made the Parkers

* Lord Lovelace's MSS.

† "Lord Macclesfield, who had the greatest share in forming the bill, and who is one of the greatest mathematicians and astronomers in Europe, spoke after-

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for some time very unpopular, although it be now one of their greatest boasts.* The present respectable representative of the family is Thomas, the fifth Earl of Macclesfield.

wards with infinite knowledge and all the clearness that so intricate a matter could admit of: but as his words, his periods, and his utterance were not near so good as mine, the preference was most unanimously, though most unjustly, given to me." — *Lord Chesterfield's Letters*, CCXLVII.

* The Chancellor's grandson some time after, standing a contested election for the county of Oxford, the mob insultingly called out to him — "Give us back, you rascal, those eleven days which your father stole from us."

# CHAPTER CXXIII.

LIFE OF LORD CHANCELLOR KING FROM HIS BIRTH TILL HIS APPOINTMENT AS LORD CHIEF JUSTICE OF THE COURT OF COMMON PLEAS.



Virtuous character of Lord King.

We now come to a Chancellor, not of the highest genius, but of most respectable talents, and, what is of more consequence, of unblemished virtue. Neither the wantonness of scandal, nor the virulence of faction, could ever invent any thing to the discredit of his morals or of his principles, and he descended to the tomb one of the most consistent and spotless politicians who have ever appeared in England.

His birth.

The subject of this memoir was the son of a grocer and salter at Exeter. His father, though carrying on a wholesale and retail trade, is said to have been of a genteel family, long settled at Glastonbury, in Somersetshire, and he was certainly of good substance and highly respectable character. In religion he was a presbyterian dissenter, and he was inclined to the tenets of the puritans. He had married a sister of John Locke, the philosopher. Peter King, the only fruit of this union, was born in the year 1669, but not being baptised by a clergyman of the established church, the day of his birth is not ascertained by the parish register.

His apprenticeship.

The sensible and worthy tradesman intended that his son should "increase his store" by likewise dealing in figs and hams, and having given him a school education suitable to this mode of life, placed him while still a lad behind the counter. For some years the future Chancellor continued to serve customers in the shop, or to go on errands about the city of Exeter. But from nature, or more probably from some unknown accidental circumstances, he cherished a most enthusiastic love of learning, which disadvantages and difficulties only served to inflame. Having exhausted his father's little library, consisting chiefly of a few books in divinity, for which he ever after retained a great relish, he spent all his pocket-money and perquisites in buying treatises on the profane

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sciences. He even contrived to initiate himself and to make considerable proficiency in the learned languages, and this application to study was so secret, that, in the language of one of his biographers, "he was an excellent scholar before any one suspected it." But he was detected by his uncle Locke, who after a long separation paid a visit to his parents, and who, astounded at the progress he had made by self-tuition, foresaw that it would be vain to try to force him to submit much longer to the drudgery of a shop or warehouse, and anticipated his fitness to succeed in a learned profession.

His love of learning.

He is sent by his uncle, John Locke, to the University of Leyden.

Instead of going to a public school or university in England where his past occupations would have been known and foolishly made a reproach to him, by the kind and judicious advice of his uncle he was sent to the university of Leyden, rarely frequented by Englishmen, but which for its excellent professors, and for its cheapness, continued the resort of Scottish youths down to the time of James Boswell, the biographer of Johnson. Here young King continued some years, and addicted himself to the studies of the place with an ardour and perseverance of which there are few examples.

His great knowledge of divinity.

Besides perfecting himself in classical lore, he ran round the whole circle of the sciences as there taught; but theology was still his favourite pursuit, and under a Calvinistic professor of church history he thoroughly established himself in the belief that, in the New Testament, and in the earliest ages of Christianity, the words Επισκοπος and Πρεσβυτερος were used indiscriminately, and that those to whom the terms were applied formed one and the same grade in the church. He was very orthodox in concurring in all the *doctrine* of the church of England, and did not consider it sinful that there should be a separate order of bishops, but he preferred the Genevese model of church government, founded on presbyterian parity, and, strongly denying the necessity for episcopal ordination, he maintained that the sacraments from the hands of a presbyter ordained by presbyters were equally efficacious as if administered by one who could prove his ecclesiastical pedigree through a succession of bishops from the Apostles. He, therefore, warmly supported the plan which had been promised by Charles II. in his declaration from Breda,—

which Clarendon for a time pretended to sanction, and which there had been a renewed attempt to carry at the Revolution—for a revision of the Articles and Liturgy of the church, whereby presbyterians as well as episcopalians might be comprehended within her pale. With this view he wrote, and on his return to this country published a most learned and profound treatise on the subject, entitled, "An Enquiry into the Constitution and Discipline of the Primitive Church." This work made a great sensation, passed through several editions, and called forth many learned and able answers, particularly one by a nonjuring clergyman of the name of Sclater, which is said (I believe without authority) even to have made a convert of King himself.

A.D. 1690. His "Enquiry into the Constitution and Discipline of the Primitive Church"

I know not that he ever thought seriously of going into holy orders. If he did, he must soon have perceived that, to be recognised by the Church of England, he must submit to Episcopal ordination; for his treatise did not a bit advance the scheme for a comprehension, and, on the contrary, there was a strong inclination by bills against "occasional conformity," and against "schism," to draw a broader and more offensive distinction between churchmen and dissenters.

He studies the law.

Locke could not instil into his nephew his own love for medicine. Of the learned professions, law alone remained, and to this King had no aversion, having with much satisfaction attended at Leyden a course of lectures on the Pandects. Accordingly, with the full approbation of his uncle, within a year after his return to England, he was entered as a student at the Middle Temple.*

Oct. 23. 1694.

His diligence.

"Moots," and "Readings," and "Exercises," at the Inns of Court had now fallen into great decay, and the existing practice of pupilage under special pleaders, conveyancers, and equity draughtsmen having hardly begun, I know not by what appliances a practical knowledge of the law was obtained beyond reading in chambers, and note-taking in the

* "Octobris 23°. 1694°.—Mr. Petrus King filius et heres apparens Jeronimi King de Civitat-Exon-gen-Admissus est in Societatem Medij Templi Spealiter et obligatur una cum Et dat ℘ fine - - - - } 04 . 00 00
—*Books of Middle Temple.*

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courts at Westminster. Of King's habits during this period of his life, I have been able to obtain no authentic account; but from the result, his devotion to juridical study must have been intense and unremitted. He was never supposed to have become quite familiar with Equity practice, but before he had put on his gown, he was allowed to be a consummate master of the common law, having studied it scientifically and historically, and knowing thoroughly its foundations and its principles, as well as the procedure by which it was administered. His study of the English constitution, and of political science, on which at the same time he bestowed much attention, was conducted under the advice of his uncle, who had become most tenderly attached to him, and regarded him as a son.

He is called to the bar, June 8. 1698.

After keeping Terms for seven years, he was called to the bar in Trinity Term, 1698.* A few days after he received the following letter, containing good wishes and good advice from his kinsman: —

"Oates, 27th June, —98.

"Dear Cousin †,

Advice from Locke to King on his call to the bar.

"Your company here had been ten times welcomer than any the best excuses you could send. But you may now pretend to be a man of business, and there can be nothing said to you. I wish you good success in it, and doubt not but you have the advice of those who are better skilled than I in the matter. But yet I cannot forbear saying this much to you, that when you first open your mouth at the bar, it

* "Ad Parliamentu-tentu-Junij 3°. 1698°. — Mr. Amory H. Ffloyne, J. Gardiner G°., Pyne W., Nelson H., Thomson W., Rutter E., Partridge H., Brockett J. Jun^r^., Salkeld W., Hurdis H., Edwards, H. Jun., are called to the Degree of the Utter barr; Weldon, W. and Nutley, R. ex gratia, King, P. upon the recomendaton of y^e^ the Lord Cheife Justice Treby, and Clarke, J. upon the recomendaton of Mr. Baron Lechmere, are also called to the same Degree."—*Books of Middle Temple.* On the 31st of May, 1698, King had been admitted to a set of chambers in Elm Court.

† From this appellation some have supposed that they could not have been so nearly related as I have supposed; but, in the English language, "cousin" means "any one collaterally related more remotely than a brother or sister," and it is often applied to a *nephew.* Thus:

"Tybalt, my cousin! O my *brother's child!*
Unhappy fight! Alas the blood is spilled
Of my dear cousin."

— *Shaks.*

should be in some easy plain matter that you are perfectly master of."

A.D. 1698.

Our young barrister sent to Oates an account of having successfully made his maiden motion, and of having the prospect of a little business. Still he was cautioned against presumption.

"Oates, July 3. —98.

"Dear Cousin,

Another letter of advice to him from Locke.

"I am glad that you are so well entered at the bar; it is my advice to you to go on quietly, and to speak only in things that you are perfectly master of, till you have got a confidence and habit of talking at the bar. I have many reasons for it, which I shall discover to you when I see you."

His success on the Western Circuit.

King chose the Western Circuit, and there his own merits were seconded powerfully by the dissenters, and the laudable Devonian disposition to push forward a young countryman well qualified to succeed at the bar. His success was rapid; he was soon eagerly retained in causes of all sorts, particularly in *quo warrantoes* respecting borough elections, which, till the Reform Bill, were the great source of profit in the West; — and the attorneys contended among themselves, which of them had the chief credit of having brought him into business.

He is returned to parliament.

He was ere long ripe for the next step in the progress of a successful lawyer — being introduced into the House of Commons. The Whigs, whose principles he approved of, were at this time very low. The Tory reaction had been so strong as to compel King William to dismiss Lord Somers, and to transfer the Great Seal to Sir Nathan Wright. According to a very common professional course followed before and since, — so often as to be free from lasting disgrace, — the ambitious young lawyer should have *ratted,* — asserting that his old friends had changed their principles, and were now going such lengths as he could not consistently support; — but through good report and evil report he steadily adhered to the cause of civil and religious liberty. It happened in his instance that honesty led to prosperity, and he was applauded; but if he had failed, he would have been laughed at, and he

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would have seen successful renegades enjoying much more of general consideration than himself.

A.D. 1701.

A dissolution of parliament taking place in the end of the year 1700, he found that he should have little chance in attempting to represent any large constituency, the popular cry being "The Church is in danger! Down with the Dissenters;" but having been recommended by his uncle to the Whig leaders, he was elected for the snug borough of Berealstone, which he represented in six parliaments, and which returned Whig lawyers for a great many years.

The Tories gained an overwhelming majority at this general election, and they threatened not only to impeach Lord Somers and the late Ministers, but to repeal the Toleration Act, and to revive all the most obnoxious laws against the Dissenters. The session was to begin in February, only a short time before the spring circuit. Locke, anxious that his nephew should do his duty in parliament, even at some considerable professional sacrifice, thus addressed him:—

"Jan. 27. 1701.

"Dear Cousin,

Urged by Locke to prefer his duties in parliament to professional gain.

"I am as positive as I can be in any thing that you should not think of going the next circuit. I do not in the mean time forget your calling; but what this one omission may be of loss to you, may be made up otherwise. I am sure there was never so critical a time when every honest member of parliament ought to watch his trust, and that you will see before the end of the next vacation. I therefore expect in your next a positive promise to stay in town. I tell you, you will not, you shall not repent it."

The young member seems to have sent a becoming answer; but his virtuous resolution was strengthened by another exhortation from the same quarter.

"Jan. 31. 1701.

"Dear Cousin,

Locke's advice to him as a member of parliament.

"Your staying in town the next vacation I look upon as resolved, and the reasons I find for it in your own letters, now that I have time to read them a little more deliberately, I think sufficient to determine you should, though I say nothing at all. Every time I think of it I am more and more

confirmed in the opinion that it is absolutely necessary in all respects, whether I consider the public or your own private concerns, neither of which are indifferent to me. It is my private thought that the parliament will scarce sit even so much as to choose a Speaker before the end of the Term; but whenever he is chosen, it is of no small consequence which side carries it, if there be two nominated or at least in view, as it is ten to one there will be, especially in a parliament chosen with so much struggle. Having given all the help possibly you can in this, which is usually a leading point, showing the strength of the parties, my next advice to you is not to speak at all in the House for some time, whatever fair opportunity you may seem to have. But though you keep your mouth shut, I doubt not but you will have your eyes open to see the temper and observe the motions of the House, and diligently to remark the skill of management, and carefully watch the first and secret beginning of things, and their tendencies, and endeavour, if there be danger in them, to crush them in the egg. You will say, what can you do who are not to speak? It is true I would not have you speak to the House, but you may communicate your light or apprehensions to some honest speaker who may make use of it, for there have always been very able members who never speak, who yet, by their penetration and foresight, have this way done as much service as any within those walls; and hereby you will more recommend yourself when people shall observe so much modesty joined with your parts and judgment, than if you should seem forward though you spoke well."*

King's patriotic resolve was farther fortified by the following letter:—

"Oates, 7th Feb. —01.

"Dear Cousin,

Farther exhortation to him from Locke to

"I am glad to find by yours of January 30. that you are resolved to stay. Your own resolution, in case of *unforeseen*

* The simplicity of the philosopher somewhat resembles that of the Emperor Alexander of Russia, who, being in England in 1815, said to a great Whig Lord that "he had admired the OPPOSITION as a valuable part of the English constitution, but he thought it would be better still if the members of opposition were required to give their advice to ministers in private instead of censuring them in parliament."

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A. D. 1701.

*accidents*, will always be in your own power. Or if you will make me the compliment that you will not go without my leave, you may be sure that, on any unforeseen pressing occasion that may happen, you will not only have my leave, but my persuasion to go. But as things are, I think it your interest to stay."

prefer his duties in parliament.

The honourable and learned member for Berealstone accordingly gave up the spring circuit, which lawyers know must have been a considerable effort of patriotism, as he thereby not only sacrificed present profit, but hazarded his professional position. His stay in town was of little use with respect to the choice of a Speaker, for Harley, the Tory candidate, was elected in preference to Onslow, the Whig, by a majority of 249 to 125.

King's silence in the House of Commons.

What hints King communicated to the Whig leaders we know not, but he seems literally to have followed his uncle's advice, and never to have opened his mouth during the whole session, although there were such tempting subjects brought forward as the settlement of the Crown upon the House of Hanover, under the impracticable condition, maliciously introduced by the favourers of the exiled family, that no one holding any office under the Crown should sit in the House of Commons; — the impeachment of Somers and his late colleagues; — and the quarrel between the two Houses, which led to an acquittal.

His "History of the Apostles' Creed."

He still took great delight in theological reading, and he now published "The History of the Apostles' Creed, with Critical Observations on its several Articles." Coming out anonymously, it was ascribed to several eminent divines, and the world was astonished to learn that it was the production of a layman. So profound, accurate, and orthodox is the work, that it is still recommended by Bishops to candidates for holy orders.

On the sudden revolution in public opinion which was produced by Louis XIV.'s recognition of the Pretender, and his threatened invasion, Parliament being again dissolved, King was reinstated in the House of Commons by the Lord of Berealstone, and the Whigs now had a majority.

King still for some time remained silent in the House,

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A. D. 1702.

but he was diligent in his attendance; and there being no *Times* or *Morning Chronicle* in existence, he almost daily sent an account of the proceedings to Oates for the use of his kinsman, who still took a very lively interest in public affairs. The Reports he furnished are not so full or interesting as might have been expected. I copy a specimen of them: —

King's accounts to Locke of proceedings in parliament.

"17th Feb. 1702.

"This day was expected to be the greatest day of this Parliament, the business thereof being to consider of the rights and privileges of the House of Commons. Mr. Finch moved first, and he proposed the first question, which was assented to without any division, as were likewise two others, which were —

"1. That to assert that the House of Commons was not the representative of all the people of England, was subversive of the constitution of the House of Commons.

"2. The same as to asserting that the House of Commons had not power to imprison others besides their own members.

"3. The same as to libels on the House of Commons.

"A 4th question proposed was, that reflecting on the House of Commons, and praying a dissolution of the Parliament, were tending to sedition, &c. That was opposed with courage and heat, so that the gentlemen who were for it moved to leave out the latter words about praying the dissolution of the Parliament: upon which a motion was made to leave the Chair, and therefore the Speaker took the Chair and adjourned; by which means all the business of the Committee is fallen to the ground, and is as if it never were — which is very great mortification to some people, though not to

"Your most affectionate

"Cousin and Serv[t],

"P. King.*

On another occasion, describing the debate on the first day of the session, after giving a sketch of the Queen's speech, Nov. 9. 1703.

* This debate is never numbered or referred to in the "Parliamentary History."

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he says: — "Sir E. S——r was only for a general address of thanks, and not to thank particularly till the House had first considered the particular matters of the speech. But it was carried with a swing to thank her Majesty particularly for all those things mentioned in her speech, and to assure her that we will stand by, support, and maintain all her alliances already made or to be made." *

King's maiden speech.

At last King made his maiden speech, which seems to have been successful; but we remain ignorant of the subject of it, and we should not have known that he had spoken but for the following letter from his cautious kinsman: —

"Feb. 29th, 1702.

Locke's congratulation and advice.

"Dear Cousin, — I am very glad the ice is broke, and that it has succeeded so well; but now you have showed the House that you can speak, I advise you to let them see you can hold your peace, and let nothing but some point of law, which you are perfectly clear in, or the utmost necessity, call you up again."

King, pleased with his *début*, and considering how the fame of it might raise him into a nisi prius leader in the West, was about to join the circuit when he received the following admonition from his uncle: —

"March 3. 1702.

"Dear Cousin, — I imagine by what you say of the circuit, that you have not duly considered the state in which we are now placed. Pray reflect upon it well, and then tell me whether you can think of being a week together absent from your trust in parliament, till you see the main point settled, and the kingdom in a posture of defence against the ruin that threatens it. The reason why I pressed you to stay in town was, to give the world a testimony how much you preferred the public to your private interest, and how true you were to any trust you undertook; this is no small character, nor of small advantage to a man coming into the world. Besides, I thought it no good husbandry for a man to get a few fees on circuit, and lose Westminster Hall. For I

* This is a fuller account of the debate than in the "Parliamentary History." See vol. vi. 151.

assure you Westminster Hall is at stake, and I wonder how any one of the House can sleep till he sees England in a better state of defence, and how he can talk of any thing else till that is done."

King's attempt to prevail on Locke to come to London.

At this time all seemed prosperous with the Whigs, and the appointment of a new ministry was every day expected, King's friends thinking that he had fair pretensions to the office of Solicitor General: but his hopes and those of his party seemed blasted for ever by the death of William III., and the triumphant accession of the Tories to power under Queen Anne.

March 8. 1702.

King continued in parliament, but almost abjured politics, and devoted himself to his profession — steadily advancing to the top of it.

In the following year he earnestly attempted to prevail on his kinsman to revisit the metropolis, thinking that a sight of his old friends would revive him, and received the following answer: —

"April 30th, 1703.

"In your last you seemed desirous of my coming to town; I have many reasons to desire to be there, but I doubt whether ever I shall see it again. Take not this for a splenetic thought; I thank God I have no melancholy on that account. But I cannot but feel what I feel; my shortness of breath is so far from being relieved by the renewing season of the year as it used to be, that it sensibly encreases upon me. I have several things to talk to you of, and some of present concernment to yourself, and I know not whether this may not be my last time of seeing you. I shall not die the sooner for having cast up my reckoning, and judging as impartially of my state as I can. I hope I shall not live one jot the less cheerfully the time that I am here, nor neglect any of the offices of life whilst I have it; for whether it be a month or a year, or seven years longer, the longest any one out of kindness or compliment can propose to me, is so near nothing when considered in respect of eternity, that if the sight of death can put an end to the comforts of life, it is always near enough, especially to one of my age, to have no satisfaction in living."

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King's visits were now more frequent to his uncle, at whatever sacrifice, and he had the unspeakable satisfaction of prolonging the old man's days by his kindness, and rendering them more comfortable.

King in love.

We must now take a glance at our hero playing the part of a lover. Having reached his thirty-fourth year, he either felt the tender passion, or he prudentially resolved to form a respectable matrimonial connection. The object of his choice was Anne, the daughter of Richard Seyes, Esquire, of Boverton, in Glamorganshire, deceased. The young lady, beautiful and accomplished, possessed a very slender fortune, but she had great expectations from a maiden aunt who had brought her up. King, upon this occasion, consulted Locke as a father, and appears to have received from him some very prudent counsel, — as we may conjecture from the following reply: —

King to Locke respecting his courtship.

"13th June, 1703.

"I thank you for your last letter, and the several kind hints in it. I believe the aunt will not come under any legal obligation for futurity, but she promiseth well. As to the young lady, she hath wit and sense, and will, I believe, be very easy in all those things you mention."

The courtship proceeded; but from a difficulty about settlements, or some other cause not explained to us, it was not brought to a happy conclusion till the long vacation in the following year. Meanwhile, Locke, thinking that his last hour was at hand, wrote the following letter to his nephew: —

Locke, supposed to be dying, sends for King.

"June 1st, 1704.

"I remember it is the end of a term, a busy time with you, and you intend to be here speedily, which is better than writing at a distance. Pray be sure to order your matters so as to spend all the next week with me; as far as I can impartially guess, it will be the last week I am ever like to have with you; for, if I mistake not, I have very little time left in the world. This comfortable, and to me usually restorative, season of the year, has no effect upon me for the better: on the contrary, all appearances concur to warn me that the dissolution of this cottage is not far off. Refuse not therefore

to help me to pass some of the last hours of my life as easily as may be, in the conversation of one who is not only the nearest, but the dearest to me, of any man in the world. I have a great many things to talk with you, which I can talk to nobody else about. I therefore desire you again deny not this to my affection. I know nothing at such a time so desirable and so useful as the conversation of a friend one loves and relies on."

Locke's recovery.

King, as may be supposed, instantly posted down to Oates, and did every thing to soothe the sufferer which could be done by a pious son for a revered parent. His attentions proved successful, and warm weather following, Locke had a wonderful revival, and was freer from pain than he had been for years past.

King's marriage.

King's affair of the heart now took an auspicious turn, and it was agreed that after the summer circuit he should be united to the object of his affections. This news gave great delight to the philosopher, and his conduct on the occasion places him in the most amiable point of view, forcing us to love him as much as to admire and to reverence him. Though conscious that when the severe season returned he could not long encounter his maladies, he took an unabated interest in the pursuits of his friends, and he was devotedly anxious to contribute to their happiness. He could not move from home, but he insisted on an immediate visit from the new-married pair,—and on their wedding-day thus wrote the author of the Essay on the Human Understanding, the Analysis of the Principles of Free Government, the Apostle of Toleration, the first intelligent Advocate of useful Education, the Founder of Free Trade in England: —

"Oates, 16th Sept. —04.

"Dear Cousin,

Locke's preparations for receiving a visit from King and his bride.

"I am just rose from dinner, where the bride and bridegroom's health was heartily drank, again and again, with wishes that this day may be the beginning of a very happy life to them both. We hope we have hit the time right; if not, it is your fault who have misled us.

"I desire you to bring me down twenty guineas. The

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wooden standish, and the Turkish travels of the Exeter man, I know you will not forget. But there are other things of more importance on this occasion, which you ought not to omit, viz.: —

"4 dried neats' tongues.

"12 Partriges that are fresh, and will bear the carriage, and will keep a day after they are here.

"4 Pheasants. The same I said of the partriges I say of the pheasants.

"4 Turkey poults ready larded, if they be not out of season.

"4 Fresh Aburn Rabbits, if they are to be got.

"Plovers, or woodcocks, or snipes, or whatever else is good to be got at the poulterer's, except ordinary tame fowls.

"12 Chichester male lobsters, if they can be got alive — if not, 6 dead ones that are sweet.

"2 large Crabs that are fresh.

"Crawfish and Prawns, if they are to be got.

"A double barrel of the best Colchester oysters.

"I have writ to John Gray to offer you his service. He was bred up in my old Lord Shaftesbury's kitchen, and was my Lady Dowager's cook. I got him to be messenger to the Council of Trade and Plantations, and have often employed him when I have had occasion in matters of this nature, when I have found him diligent and useful.

"I desire you also to lay out between 20 and 30 shillings in dried sweet-meats of several kinds, such as some woman skilful in those matters shall choose as fit and fashionable (excepting orange and lemon peel candied, of which we are provided). Let them be good of the kind, and do not be sparing in the cost, but rather exceed 30 shillings.

"These things you must take care to bring down with you, that I may, on this short warning, have something to entertain your friends, and may not be out of countenance while they are here. If there be any thing that you can find your wife loves, be sure that provision be made of that, and plentifully, whether I have mentioned it or no.

"Pray let there be a pound of Pistachios, and some China oranges, if there be any come in."

In his affectionate zeal that the feast might pass off auspiciously, on the following day he again addressed the bridegroom:— CHAP. CXXIII.

"Oates, 17th Sept. —04.

"Dear Cousin,

"Though I writ to you yesterday, yet understanding by yours of the 10th, that the business is complete, at which I rejoice, I cannot forbear to write to you to-day to wish you and my cousin, your wife, joy, to whom, pray give my hearty service. I expected no more in your letter than you writ. It was enough for a man on his wedding-day; and therefore I hope, though you say nothing that you have prepared my present of a toilet furniture for my cousin, your wife, and will give it her from me before you come out of town; else I shall complain to her of you when I see her." [He then proceeds with a great many minute directions as to the provisions — the choosing of them, the packing of them — a statement that they would be eight at table, and a hope that John Gray would be able to make a bill of fare, concluding with these kind words,] "I shall be glad to bid you and my cousin, your wife, joy myself, and am

"Your most affectionate Cousin, and
"humble Servant,
"JOHN LOCKE."

Their visit to Locke.

John Gray performed his part to admiration, showing that he had served under a great master in the *sçavoir vivre*. The philosopher himself could taste little beyond a crust of bread and a cup of water, but he was the most cheerful of the party, and felt true happiness in making others happy.

His last illness.

The wedding-party had scarcely left him, when the cold weather returning, his asthma and his other complaints were worse than they had ever been, and he knew that certainly his hour was come. But in the consciousness of a well-spent life, and far more in the firm faith of the great truths of the gospel, his serenity was unclouded: He had before executed his will, leaving King the bulk of his property, and now he wrote to him the following letter, more fully to explain his wishes, and to bid him a last farewell:—

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Locke's farewell letter to King.

"Oates, 4th Oct. 1704.

"That you will faithfully execute all that you find in my will, I cannot doubt, my dear cousin. Nor can I less depend upon your following my directions, and complying with my desires in things not fit to be put into so solemn and public a writing.

"You will find amongst my papers several subjects proposed to my thoughts, which are very little more than extempore views laid down in sudden and imperfect draughts, which, though intended to be revised, and farther looked into afterwards, yet, by the intervention of business, or preferable inquiries, happened to be thrust aside and so lay neglected, and sometimes quite forgotten. Some of them, indeed, did engage my thoughts at such a time of leisure, and in such a temper of mind, that I laid them not wholly by upon the first interruption, but took them in hand again as occasion served, and went on in pursuance of my first design till I had satisfied myself in the inquiry I at first proposed. Of this kind is, 1. my discourse, 'Of seeing all things in God.'" 2. My discourse "Of Miracles." 3. My "Conduct of the Understanding." 4. Papers inscribed "Physica." 5. My "Commentaries upon the Epistle of St. Paul." (After directions respecting their publication, the management of his affairs, and the payment of his legacies, he concludes, in a tone of great tenderness:) — "Remember it is my earnest request to you to take care of the youngest son of Sir Francis and Lady Masham, in all his concerns, as if he were your brother. He has never failed to pay me all the respect, and do me all the good offices he was capable of performing, with all manner of cheerfulness and delight, so that I cannot acknowledge it too much. I must therefore desire you, and leave it as a charge upon you, to help me to do it when I am gone. Take care to make him a good, an honest, and an upright man. I have left my directions with him, to follow your advice, and I know he will do it, for he never refused to do what I told him was fit. If he had been my own son he could not have been more careful to please and observe me.

"I wish you all manner of prosperity in this world, and the everlasting happiness of the world to come. That I loved

you, I think you are convinced. God send us a happy meeting in the resurrection of the just! Adieu!

"JOHN LOCKE."

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Death of Locke.

King, on the receipt of this letter, left his bride in the West of England, and arrived at Oates in time to see how a Christian should die. Having been present when the last marks of respect were paid to the remains of his illustrious kinsman, he got possession under his will of his property, and his MSS., and he most scrupulously fulfilled all his bequests and all his wishes, feeling himself, and transmitting to his posterity, the most profound veneration for the memory of the deceased.* Indeed, this relationship is, and I believe is felt to be, a greater honour to them than if the Chancellor had been the son of a Duke, or a Knight of the Garter. The late

* On this occasion he wrote the following letter to his cousin, Mr. Peter Stratton, of Bristol, son of his aunt, Elizabeth Locke, the philosopher's other sister:

"Cousin, London, November 4. 1704.

"This is principally to acquaint you that Mr. Locke died last Saturday. By his will he has made me executor, and given several legacies, to the value of above 4500*l*. Amongst other legacies he hath given you 50*l*., and to your sister Hassell 5*l*., both which I am willing and ready to pay. He hath not made any disposition of his lands by his will, but hath suffered them to descend according to the course of the law to his heirs, who are you and me; so that one half of his lands do now belong to me, and the other half to you. He frequently told me in his lifetime that he would let his lands go in this manner, and believing that money would be more for your purpose than land, desired me to purchase of you your half. I have no occasion for it; but, seeing he intimated such a thing to me, I will, if you please, purchase your half, and give you the utmost and full value for it. My humble service to my cousin your good wife, to my aunt, to our friends at Sutton, and all our relations.

"I am, Sir,

"Your most affectionate Cousin and humble Servant,

"P. KING."

There is extant another original letter of Lord King, dated 23d February, 1694, which I hope may satisfy those who say that he and the philosopher could not be "uncle and nephew" because they called each other "cousin," for this letter to William Stratton, the husband of Locke's sister, begins, "Honoured Uncle;" and thus concludes — "Do me the favour to present my service to all my friends with you, and in particular to my aunt. In any thing wherein I can serve you I shall be always ready, and still endeavour to approve myself to be

"Your affectionate Nephew and Servant,

"PETER KING."

The above letters of 3d Jan. 1698, 27th Jan. 1701, 31st Jan. 1702, 29th Feb. 1702, 30th April, 1703, 1st Jan. 1704, have been before in print. All the others I have selected from an immense mass of correspondence between him and Peter King, which is not so interesting as might have been expected, as it generally turns on matters of private business.

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Lord King, with true piety and talent, wrote an admirable Life of the Philosopher, and the name of "LOCKE," has become a patronymic in the family.

King as a member of parliament.

But we must now turn to the member for Berealstone, in the House of Commons. He attended diligently in his place during the short session which followed the accession of Queen Anne. There is no doubt that now and henceforth he took an active part in debate, but we know nothing of what he said on the particular occasions when he spoke. He has had worse luck in this respect than any other leader on either side, except Bolingbroke. Although he sat in parliament the whole of the present reign, and after the promotion of Lord Cowper to the Great Seal, in 1705, was almost looked upon as the leader of the Whigs in the Lower House, his name is not once mentioned in the "Parliamentary History," and we trace his career in the House of Commons only by casual notices in contemporary writers. As the administration became more and more Whiggish under Godolphin and Marlborough, his opposition to it was no doubt gradually softened, although he must have continued to fight many hard battles against the ultra Tory bills, which for several years were regularly carried in the Commons, and thrown out in the Lords.

His speech on "privilege" in the Aylesbury case.

When the great case of "privilege" arose out of the Aylesbury election, he took the rational course, by contending that the action against the returning officer for maliciously refusing the vote of an elector was maintainable. In the "STATE TRIALS" there is preserved some account of his speech on this occasion:—*Mr. King.* "I am called up by the strange assertion of the honourable gentleman who has just sat down, that the right of electing is only a service, and not a liberty or privilege. I desire that the act 20 Car. 2. c. 9. may be read. [Members, *No, no.*] It is an act to enable the inhabitants of the county palatine of Durham to send members to parliament; and it recites, that they had not hitherto enjoyed that 'liberty and privilege.' I may surely call that a 'liberty and privilege' which is so called by the legislature; and if it be a 'liberty and privilege,' surely, for the wrongful violation of it, there ought to be a remedy.

Gentlemen say, 'this is a new action, never heard of before.' True! this particular action is new; probably because the right to elect was never before so shamefully violated; but actions of the same nature, and grounded on the same principles, are as old as the common law of England. 'Et ubi eadem est ratio, idem jus.' Was it ever heard, till the very late instance, that an action lay against an officer for denying a poll to one who stood candidate for the office of bridge-master? But the injured party was found entitled to damages. No action was ever brought, till 16 Jac. 1., by a reversioner against tenant for life for refusing to let him enter to view waste; but the law always was, that the reversioner had that right. It stands upon the general maxim of law, 'if you do me a wrong, I must have a remedy.' It is said by a worthy gentleman, that in real actions there are no damages; but in real actions, if you do not recover damages, you recover the land itself. [Members, *The question! the question!*] I find gentlemen are very uneasy. I will trouble you no further. [Members, *Go on, go on.*] I agree the determining the right of election belongs to the House of Commons. This action does not relate to any disputed right of election, but is brought by a man who has the unquestioned privilege of voting against an officer for maliciously refusing his vote." * I presume that the interruption came from some Tory squires, who did not at all understand the subject, but were impatient to vote as they were ordered, and to get off to the "October Club," where they might drink "Church and Queen," with, perhaps, a bumper to James III.,— the toast of "the King over the water" not yet being invented. The derided Peter, though so discourteously treated in this controversy, did not flinch, but continued resolutely to resist the tyrannical majority, who went on imprisoning plaintiffs and counsel, passing absurd resolutions against the Lords, and playing all manner of fantastic tricks, till they were sent adrift by a dissolution.

King's eminence at the bar.

Although it did not suit party arrangements that King

* 14 St. Tr. 770.

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should be promoted to be a law officer of the Crown, he was now at the head of the bar for reputation and business, being not only the acknowledged leader of the western circuit, but retained in all the great causes which came before the common law courts at Westminster. His first judicial appointment was as Recorder of Glastonbury, where it is said that his forefathers had been settled; but if this pleased his feelings, it brought him no emolument and little eclat. He was introduced to the honours of the profession by the City of London, which has in several ages corrected the injustice of the government to eminent lawyers. On the death of Sir Salothiel Lovel he was elected Recorder of that great Corporation. Soon after, on the presentation of an address of congratulation from the City on Marlborough's bloody victory at Malplaquet, he was knighted by Queen Anne, although she looked upon him personally with no favour, by reason of his early connection with the dissenters, and his present preference of the low church party.

July 27. 1708.

He is elected recorder of London.

At the meeting of the new parliament in 1708 there was a strong inclination to propose Sir Peter King as Speaker, but another section of the Whigs were resolved to have a country gentleman in the chair, and the whole party united in the election of Sir Richard Onslow, that they might keep out the Tory candidate.

He is one of the managers on the impeachment of Sacheverell.

When the trial of Sacheverell came on Sir Peter, in respect of his ecclesiastical lore, was selected to support the second article of the foolish impeachment,—which charged the Doctor with having attacked the Toleration Act, by asserting "that he is a false brother with relation to God, religion, and the church, who defends toleration and liberty of conscience; that Queen Elizabeth was deluded by Archbishop Grindal, a false son of the church, and a perfidious prelate, to the toleration of the Genevese discipline; and that it is the duty of true Christian pastors to thunder out anathemas against all who do not approve of the discipline as well as the doctrines of the church of England." Sir Peter's speech at the bar of the House of Lords was very long and elaborate, but cannot now be perused with much pleasure. He gives a history of

the Reformation in England, with a list of the statutes to enforce conformity to the church, and in ease of protestant dissenters. He very ably defends Archbishop Grindal, and refutes the doctrine that the toleration of protestant dissenters is antichristian; but he utterly fails in giving a satisfactory answer to the Doctor's plea, that "no words spoken of an archbishop 120 years since deceased will, in construction of law, amount to a high crime and misdemeanour," or in showing that the preaching of intolerance and bigotry from the pulpit was a fit subject of prosecution by the House of Commons. Says Sir Peter, in his peroration, "for the Doctor to come and say that 'though the dissenters are tolerated by act of parliament, and though they are exempted by law from penalties, yet, be the law of the land what it may, let the ecclesiastical pastors do their duty, let them fulminate their excommunications, and thunder out their anathemas, and let the civil magistrate, the earthly powers, dare to reverse them if they can,' I submit this to your Lordships, whether this is not directly infringing the Queen's supremacy as well as weakening and censuring the toleration — which is what he is charged with in this article."* On a subsequent day he replied to the defence of the Doctor and his counsel on the second article, and turned, rather ingeniously, against them their argument, that the Toleration Act could not alter the sin of schism. "Here is the force of the Doctor's argument; 'the dissenters were schismatics before the Act of Toleration; as they were schismatics before, so they are schismatics still; it is the duty of all superior pastors to thunder out their anathemas against schismatics; when they thunder out these anathemas, they are ratified in heaven; whatever is ratified in heaven no power on earth can reverse; therefore, though the dissenters be exempted from human penalties by the Toleration Act, and are thereby preserved in the free exercise of their religion and consciences, yet, notwithstanding that, let the superior pastors do their duty and thunder out their anathemas against them, and let any

* 15 St. Tr. 134—151.

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power on earth reverse those anathemas.' Have we not here an open defiance of the authority of parliament, and a direct incitement to a violation of the law of the land?"

Sir Peter was supposed to acquit himself very creditably, but was rather thought to be too forbearing in dealing with the High Church party, and did not please the government by any means so much as Parker, who furiously assailed the Doctor and his adherents, covering them with odium and ridicule, and was therefore made Chief Justice of the Court of Queen's Bench, on the vacancy now occurring by the lamented death of Holt.*

A.D. 1712. He is counsel for Whiston.

Mr. Recorder King continued to practise at the bar, till the conclusion of this reign, with undiminished reputation; but there is only one reported trial in which I find any account of his pleading, which was in the famous prosecution of "Wicked Will. Whiston," for heresy. This lover of eccentricity and paradox, when condemned before the Convocation and the Vice-chancellor's Court at Cambridge, was without counsel; but when his case came, by appeal, before the DELEGATES, he was ably defended (without a fee) by our great theological lawyer, who showed that his notions of the Trinity were not Arian, but were founded on the Apostolical constitutions, and that, at any rate, the sentence against him was irregular, and ought to be reversed. Some Bishops and Doctors of the civil law, who were in the commission, were nevertheless strongly inclined to affirm the sentence, but no common-law Judge would join them, and King boldly threatening them with a *præmunire*, they concurred in the acquittal.† This prosecution, instituted by the High Church

* Ante, p. 511.

† 15 St. Tr. 703—716.; Som. Hist. Anne, 426.; Tindal, ix. 91. 15 St. Tr. Although King met with unbounded gratitude at the time, afterwards, because he would not adopt the fantastical notions which, as an advocate, he had attempted to palliate, Whiston attacked, maligned, and, I believe, grossly misrepresented him. "Upon my application to him," says Will. (probably in favour of a friend as wrong-headed as himself), "I found so prodigious a change in him, such strange coldness in matters that concerned religion, and such an earnest inclination to money and power, that I gave up my hopes quickly. Nay, indeed, I soon perceived that he disposed of his preferments almost wholly at the request of such great men as could best support him in his high station, without regard to Christianity; and I soon cast off all my former

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party, and meant as a set-off to Sacheverell's, was equally foolish and equally abortive. Bishop Burnet, who had tried to stifle it, said on the occasion, with excellent good sense, "I have ever thought that the true interest of the Christian religion was best consulted where nice disputing about mysteries was laid aside and forgotten."

He defends Bishop Fleetwood.

About the same time Dr. Fleetwood, a Whig bishop, but so warmly attached to the church as to be a favourite of Queen Anne, having published a volume of Sermons, with a Preface, in which he lamented that "God, for our sins, permitted the spirit of discord to go forth and sorely to trouble the camp, the city, and the country, and to spoil for a time the beautiful and pleasing prospect which the nation had enjoyed,"—this was construed into an insult on the Government,—and, to annoy a low churchman, a complaint was made in the House of Commons against the author. He was denounced as an enemy to religion and good government, and some very violent Tories, trying to outdo the folly of their antagonists, proposed that he should be impeached. Sir Peter King warmly took up his defence, and contended that the Bishop, whether right or wrong, had not exceeded the limits of fair discussion. The Commons waived the impeachment, but, by a majority of 119 to 54, "resolved this Preface to be malicious and factious, highly reflecting

acquaintance with him. Now, if such a person as the Lord King, who began with so much sacred learning and zeal for Christianity, was so soon thoroughly perverted by the love of power and money at Court, what good Christians will not be horribly affrighted at the desperate hazard they must run if they venture into the temptations of a Court hereafter; *Exeat aulâ qui vult esse pius.*" . . . . "When I was one day with the Lord Chief Justice King, one brought up among the dissenters at Exeter under a most religious, Christian, and learned education, we fell into a dispute about signing articles which we did not believe, for preferment; which he openly justified, and pleaded for it that 'we must not lose our usefulness for scruples.' Strange doctrine in the mouth of one bred among dissenters, whose whole dissent from the legally established church was built on scruples! I replied, that 'I was sorry to hear his Lordship say so; and desired to know whether in their Courts they allowed of such prevarication or not?' He answered, 'they did not allow of it;' which produced this rejoinder from me, 'Suppose God Almighty should be as just in the next world as my Lord Chief Justice is in this, where are we then?' To which he made no answer. And to which the late Queen Caroline added, when I told her the story, 'Mr. Whiston, no answer was to be made to it.'" Archbishop Wake, Archbishop Potter, and Lord King, Whiston sets down as "three excellent men utterly ruined by their preferment at Court."—*Whiston's Memoirs*, i. 35. 227. 314. 365.

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on the present administration of public affairs under her Majesty, and tending to create discord and sedition amongst her subjects;" and condemned it to be burnt by the hands of the common hangman.*

He opposes free trade with France.

I cannot find any other occasion on which Sir Peter King distinguished himself, except the debate on the 8th and 9th articles of the treaty of commerce concluded at Utrecht, providing "that no higher duties should be imposed on the importation of goods from France than were payable for the like goods brought from any other country in Europe." I am sorry to say that he joined General Stanhope and several other eminent Whigs in opposing this measure of free trade, on the ground that our rising manufactures of linen, silk, and paper, would be ruined by French competition; and as it was defeated by the clamours they excited for "protection to native industry," the favourable opportunity for establishing a reciprocally advantageous commercial intercourse with France was for ever lost. But I think my brother barrister may well be forgiven for his bad political economy in the very beginning of the eighteenth century, when we find an enlightened nobleman, in the middle of the nineteenth, still condemning this treaty, saying, with undoubting confidence in the soundness of the old *mercantile system*, "it has been calculated, on apparently good grounds, that had the project passed, the annual balance against, or loss to, Great Britain would have been not less than 1,400,000*l.*;" and quoting, with applause, the saying of a Bishop profoundly ignorant of such subjects, that the treaty would have been disgraceful, "if even we had been as often beat by the French as they had been beat by us." †

* Tindal's Cont. xix. 537. Bishop Fleetwood, in a letter to Bishop Burnet, giving an account of this affair, pays a compliment to the defence set up for him by Sir Peter King and other gentlemen of the long robe.

† Lord Mahon, i. 49. On the first division on the subject, ministers had a majority of 252 to 130; but the bill to carry these articles of the treaty into effect was thrown out by a majority of 194 to 185. Had it reached the House of Lords, I am afraid it would have had no chance there, where the Whig party was still so powerful. "Free trade" is a subject on which Whigs and Tories have changed principles; but the former have ever steadily favoured free political institutions and liberty of conscience, and the latter high prerogative and civil disqualifications to protect the church.

A.D. 1712.

He supports Sir R. Walpole when expelled from the House of Commons.

It has been alleged against Sir Peter King, that during the domination of the Tories in the latter part of Queen Anne's reign, he showed an inclination to go over to them, and that he used some harsh expressions against Walpole, when that distinguished Whig was most infamously expelled the House of Commons and sent to the Tower for alleged corruption in his office of Secretary at war; whereas Sir Peter most steadily adhered to his party and his principles through good report and evil report, and what he said of Walpole was that "he *deserved as much to be hanged* as he deserved the punishment inflicted upon him, expulsion and imprisonment."* He was a most zealous friend to the succession of the House of Hanover, and took an active part in supporting the Regency Bill, and counteracting the machinations of the Jacobites. After Parker's elevation to the bench, he was by far the most eminent Whig lawyer in the House of Commons, and upon a change of government his promotion was considered certain — as he was so much esteemed by Lord Somers and Lord Cowper, who, in such an event, would regulate legal appointments. But the prospect still continued very gloomy till the death of the Queen, which suddenly reversed the respective positions of the rival factions.

He supports the Protestant succession.

He delivers the address of the City of London to George I. A.D. 1712.

At the head of the grand procession of the lord mayor, aldermen, and citizens of London, to meet King George when he first entered the limits of their jurisdiction in Southwark, walked Mr. Recorder Sir Peter King, who delivered a loyal and eloquent address (which must have appeared gibberish to the royal ear), hailing the happy arrival of a great Protestant Prince, who was to secure to us our religion and liberties, and, putting an end to all discord, was to make commerce, literature, and the arts for ever flourish among us. As Madame von Schulenburg and the Baroness Keilmansegge did not make their appearance for a few weeks, and the other Hanoverians who afterwards declared that they had come "for all our *goods* †," were still kept in the back ground, not yet beginning the sale of offices or honours, —

* Coxe's Life of Sir R. Walpole, i. 66.; Tindal.
† "And chattels, too," was the reply.

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all at first went smoothly. Lord Cowper, having the Great Seal restored to him, was required to submit to his Majesty a *projet* for the settlement of Westminster Hall, the unlimited power being still exercised of removing Judges on a demise of the Crown. Part of the recommendation was that Lord Trevor, a good lawyer and a man of fair character, but a violent Tory who had been one of Anne's batch of twelve Peers, should be replaced as Lord Chief Justice of the Common Pleas, by Sir Peter King. His Majesty, who hardly knew the difference between the office of Lord Chief Justice of the Common Pleas and Lord Mayor of London, of course graciously assented.*

He is made Chief Justice of the Common Pleas.

* Ante, p. 348.

# CHAPTER CXXIV.

## CONTINUATION OF THE LIFE OF LORD KING TILL HE WAS MADE LORD CHANCELLOR.

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A.D. 1714.

WHEN this change on the bench of the Court of Common Pleas had been publicly announced, and before it had formally taken place, the Chief Justice elect received the following magnanimous epistle from his falling predecessor:

"Bromham, Oct 12. 1714.

"Sir,

Letter from Lord Trevor to Sir Peter King on his appointment.

"I am informed it is his Majesty's pleasure to remove me from my office of Ch. Justice of the Co. Pleas, and to confer the same upon you — which I heartily wish you joy of, and am glad to see it placed in a person so worthy and much more capable to discharge the duty of it than myself. I am desired by an old servant, who hath served me very faithfully when I was Attor. Gen[l]. and Ch. Justice, as Clerk of the fines, to recommend him to you; and I desire the favour of you that you will be pleased to employ him as your Clerk in that employment, or as Cryer, if you are not engaged. I am confident you will find him a very good servant. His name is Bryan Whealon. In doing which you will very much oblige

"Your most faithful Friend
"and Servant,
"TREVOR."

Congratulation from Huguenot refugee priest.

When the appointment had taken place, thus was he congratulated by Majendie, a distinguished refugee Huguenot minister, to whom he had shown great kindness: —

d'Exeter, le 9[e] de Mai 1715.

"Mylord,

"C'est avec un plaisir inexprimable que je mets ce noble titre au frontispice de cette lettre, et que je vous félicite de

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tout mon cœur, de ce qu'aprez vous avoir élevé à la dignité de Premier Juge dans un des premiers Barreaux de ce Roïaume, sa Majesté vous a approché de son auguste persone et vous a admis au nombre de ses Conseillers, digne comme vous l'êtes d'y occuper le premier rang, auquel je ne désespère pas de vous voir un jour arriver; digne, dis-je non-seule[t] par votre vaste savoir, par votre pénétration, et par les qualités extraordinaires de votre esprit; mais encore par votre probité, par votre piété, et par la droiture de votre cœur.

"Ah! certes c'est à présent que nous avons sujet d'espérer la réformation des mœurs, et l'avance[t] de l'intérêt Protestant dans la Grande Bretagne, puisque nous avons dans le Conseil des personnes d'une piété si eminente, et qui ont si fort à cœur les intérêts de la gloire de Dieu, et du salut des âmes. Bénit soit Dieu qui a élevé, coṁe sur une haute montagne, un si éclatant flambeau, affin que sa belle lumière resplendit encore d'avantage, et fût salutaire à un plus grand nombre de persones. Mais je ne remarque pas que suivant les mouvemens de joie et d'admiration dont mon âme se sent ravie, je pourrois, Mylord, vous ennuyer par mes lignes peu correctes, choquer votre modestie et vous faire perdre des moments qui vous sont chers, et que vous donnez à des affaires tout autre[t] importantes."

An excellent common law Judge.

Sir Peter King enjoyed the dignity of Lord Chief Justice of the Common Pleas for a period of eleven years, and he is universally allowed unqualified praise as a common law Judge. To great learning in his profession and strict impartiality, he added considerable quickness of perception, immense industry, and inexhaustible patience in listening to the drowsy Serjeants who practised before him. His judgments, as handed down to us in the Reports, are marked by great precision of definition, subtlety of distinction, breadth of principle, lucidness of arrangement, and felicity of illustration — his copious authorities being brought forward to fortify, not to overlay, his reasoning.*

* There was a laboured eulogy upon him in the forty-ninth number of the *True Briton*, said to be from the pen of Duke Wharton. The writer, after

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Criminal business being excluded from the Common Pleas, and the cases there, during his time, turning chiefly upon the law of real property, his decisions in his own Court could not be made interesting or intelligible to the general reader. But he was occasionally called upon to act judicially in other tribunals,— to which we may follow him with some chance of useful instruction.

Trial of the rebels.

After the suppression of the rebellion of 1715, Lord Chief Justice King presided at the trial of the rebels, who, being commoners, were brought before a jury. His report of the convictions to the Secretary of State is curious, and I give a few extracts from it, showing his humane desire to save those who, from mistaken loyalty, had forfeited their lives to the law: "*James Home alias Hume*, was found guilty of levying war in the county of Lancaster. The evidence against him was plain and clear, that he came with the rebels from Scotland, and marched with them to Lancaster and Preston: and it was not much gainsay'd by his counsel, but their principal defence for him was that his understanding was so low and weak as made him incapable of committing high treason, and several witnesses were produced for that purpose. The jury believed him to be a weak man, but not so weak as to excuse him from the commission of high treason. It did appear from his behaviour at the trial, and from the evidence given, that he is a very weak foolish man, of a very low understanding, and my humble opinion is that he is a proper object for his Majesty's grace and favour. He hath not yet received sentence. Whether his Majesty will be pleased to extend his favour by a *nolle prosequi* before sentence, or by a pardon after sentence, I humbly submit."

His report to the Secretary of State of prisoners convicted before him.

pointing out the peril to which he was exposed in being compared with his predecessor Trevor, and with Cowper, now Lord Chancellor, says, "Yet, under all these difficulties, which would have overwhelmed another, with the eyes of all the kingdom upon him, hath this truly great man acquitted himself in his high office to the universal satisfaction of both parties, contrary to the expectations of the one, and even beyond the hopes of the other. And if he had not been a prodigy of learning and wisdom, it would hardly have been possible for him to surmount so many disadvantages, and to appear in the same illustrious light as my Lord Trevor."

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"*George Gibson* was tried on an indictment for levying war in the county of Northumberland. He was a tenant and servant of the late Lord Derwentwater — went with the Northumberland rebels to Kelso, and there joined the Scotch rebels — from thence came to Jedburgh — from thence came to his own house in Northumberland — from thence returned to the rebels in Scotland and came along with them to Preston, where he was taken with the rest. The jury without going from the bar found him guilty. He hath since sent me a petition to His Majesty, which is enclosed, alleging that he endeavoured several times to escape, and a certificate of his good behaviour, signed by several of his neighbours. It did not appear on his trial that he had used any acts of violence to his Majesty's subjects, but some instances were proved of his humanity to them. *John Windraham* was tried for high treason in levying war at Kelso, in the county of Tiviotdale. There were three witnesses produced against him, whereof one was rather a witness for him, and of the other two one proved him to be, together with several rebels, in a public coffee-house at Kelso, and the other proved that he was quartered at the minister's house in Kelso, where the witness and two other rebels were also quartered; that he saw him dismount his horse at the minister's house — had sword, pistols, and jack boots — dined with him twice or thrice there — that he was not under any restraint, and that he saw him several times afterwards among the rebel horse. *George Home*, of Wedderburn, was tried for levying war at Perth, in the county of Cumberland. The evidence against him was, that he was seen amongst the rebels, at a place called Armfeth Bridge, where the rebels staying to refresh themselves, most of the gentlemen alighted off their horses and gave them to their servants to lead whilst they stood all together in a close eating and drinking — among which number was the prisoner, who came from thence with the rebels, and a little beyond the bridge was seen in company with them on horseback." [The report having then detailed similar evidence against *George Home*, of Whitfield, goes on to say,] "The defence of these three

prisoners was that they were brought into the rebels by force, and continued under force till the surrender of Preston. Upon the whole, the several juries, after consideration, found them all guilty; but inasmuch as the evidence was contradictory and doubtful, and one of the King's witnesses proved part of the prisoners' defence, I humbly submit whether these three persons may not be proper objects for his Majesty's mercy with respect to their lives."*

Jacobite parson convicted of treason.

Among the convicts was a Jacobite parson, who had not only attended the rebels as their chaplain, but had very earnestly exhorted them to march into England, for the purpose of dethroning the usurper George. Deep horror was excited among the clergy by the prospect of a priest, apostolically ordained, suffering the ignominious and cruel sentence pronounced upon traitors — especially as the great bulk of rectors and curates fully participated his sentiments. A representation upon the subject was made to the Bishops, who, although all professing to be well inclined to the protestant succession, had among them hankerers after the exiled family, and were all sincerely animated, not only by the *esprit de corps*, but by genuine feelings of mercy. Accordingly Wake, the Archbishop of Canterbury, wrote the following letter to Lord Chief Justice King, — which would perhaps be a little censured for the levity of its tone, as not quite suitable to the solemnity of the occasion, if it did not proceed from the pen of the Primate of all England:

"July 5. 1716.

"My Lord,

Letter from the Archbishop of Canterbury in his favour.

"I am desired by all my brethren, the Bishops in town, who were to wait upon the King this morning, to recommend to your Lordship the case of an unfortunate brother of ours, Mr. Paul, who, they tell me, was arraigned and convicted before your Lordship.

"That he deserves to be hanged we all agree, and if all others be hanged who deserve it as well as he, we have nothing to say. But if others of the laity be spared, who

* MS. Report, dated 13th Jan. 1716.

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are under the same circumstances, we hope this poor man shall not be made an example—merely for his office sake, and because he is a clergyman.

"We are told that a great deal depends upon the report which the Judges make of those whom they try. We hope your Lordship will be so good as to report his case as favourably as you justly can, and whatever you shall please further to do for him, as he is an unworthy brother of the order, we shall all thankfully acknowledge to you. I am,

"My Lord, your Lordship's
"very affectionate Friend and Servant,
"W. CANT."

A printer convicted of high treason for printing a libel.

In the year 1719, Lord Chief Justice King presided during a trial at the Old Bailey, which shows the extreme severity to which, from the multiplied plots to bring in the Pretender, the government thought it necessary to proceed against the Jacobites. An act had passed in the reign of Queen Anne, to make it high treason maliciously and advisedly to assert that the Pretender had a right to the throne; but it had been treated as a dead letter—till now that John Matthews, a printer, nineteen years of age, was indicted upon it for printing a pamphlet, entitled, "Ex ore tuo te judico, vox populi, vox Dei," in which the writer somewhat jocularly contended that all parties should now acknowledge the Pretender, for the Tories believed, as a principle of religion, in the "divine right of Kings," and the Whig maxim of "Vox populi vox Dei," led to the same result, as the vast majority of the population of this country were now for King James. The poor printer contended that this could not be considered a *malicious* or *advised* asserting of the title of the Pretender, as he had only been acting in his trade, and the composition itself was merely thoughtless; but Lord Chief Justice, according to the strict rigour of the law, laid down to the jury that "the fact implied *malice*, and that doing a thing *advisedly* is doing it with a consciousness of what is done;"—so there was a verdict of "guilty." The prisoner's counsel then moved in arrest of judgment that the indictment charged no crime, for being

in Latin, it used the word "impressit" to predicate the *printing* of the book, whereas "imprimere," in the just meaning of the Latin tongue, has no such meaning, *printing* not being known among the Romans; and at all events the practice should have been followed which was proper where any doubt existed as to the meaning of a Latin word in law proceedings, and that the indictment should have run "IMPRESSIT, anglice *printed*." But the Chief Justice ruled that "imprimere" had acquired the meaning of "to print," as we may know from the "imprimatur" on books, the printing of which was permitted. The frightful sentence was accordingly passed, and, I am shocked to say, was carried into full execution at Tyburn.* This appears to me the hardest case of treason which is to be found after the Revolution. The young man might properly have been imprisoned for some months for assisting in the publication of a libel, but it was a confounding of the real distinctions of crimes, to hang, embowel, behead, and quarter him as a traitor. From Sir Peter King's known humanity, I think we may safely infer that this execution took place against his recommendation.

Sir Peter King's humanity.

Upon all occasions when we have sufficient means of examining his conduct, we uniformly find him exerting himself to mitigate the misfortunes, and to soothe the sufferings of others. About this time, a complaint being made to him of some severities towards prisoners confined in the Fleet under Common Pleas process, and the warden having urged in answer the insecurity of the prison, whereby he incurred great responsibility from the danger of the prisoners escaping; the Chief Justice replied,—"Then you may raise your walls higher, but there shall be no prison within a prison where I bear rule."

Lord Chief Justice King went as Judge of Assize twice a year, and he broke through the old custom for a Judge to continue to "ride the same circuit," for he visited all the English circuits in their turn, or as it has been since technically called in Westminster Hall, "he ran the gauntlet."

* 15 St. Tr. 1323—1404.

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When about to start on the Norfolk circuit in the summer of 1720, he received the following curious letter to excuse the non-attendance of the Vice-chancellor and Heads of Houses at Cambridge, on account of the controversy then raging between them and Bentley, the celebrated Master of Trinity, who, by ancient usage, had to lodge the Judges during the assizes in his college.

Letter to Lord Chief Justice King respecting Dr. Bentley.

"My Lord,

"I would have waited on your Lordship, but for the terrible apprehensions I am under, that my poor wife, who is lately brought to bed, will shortly breathe her last. Under this anxiety, I am forc'd, by letters from Cambridge, to bear in mind the affairs of that University. Thither your Lordship is quickly going, and believe me, my Lord, none upon earth are more ready to pay you due respect and honour than we are. But, my Lord, the Master of Trinity has taken a resolution, and put it in practice, to make the Vice-Ch^r^ and Heads wait in the open Court among the mob, or at least to be taken into a comon room among the footmen, when they come to pay their duty to you. Till he shall come to a better mind (which in this and all other respects I wish he may), I beg leave to depend on your Lordship's and Mr. Justice Blencoe's goodness, that you will favourably interpret this behaviour of the University, and accept your usual present from the hands of the Bedell; if the Heads are not allow'd the constant customary convenience in waiting upon you. Pardon this trouble, my Lord, and the confusion I am in.

"I am, with the greatest respect,
"Your Lordship's
"Most obedient, humble Serv^t^,
"T. Gooch.*

"Great Russell Street, July 28. 1720."

* *Lord Lovelace's MSS.* — Gooch, the Master of Caius, had been Vice-chancellor in 1718, and had pronounced the famous sentence whereby Bentley was deprived of his degrees—till it was reversed by an appeal to the courts of law. The Judges being afterwards at Trinity Lodge, one of them took occasion to observe, "Dr. Bentley, you have not yet thanked us for what we have done for you." *Bentley.* — "What am I to thank you for? Is it for only doing me justice after a long protracted law-suit? Had you, indeed, restored me at once to my rights, I might have expressed my obligations; but such have been your

Lord Chief Justice King's famous decision on the "Coventry Act."

A very noted case, though not of a political nature, came before Lord Chief Justice King two years after, at Bury St. Edmunds, in which, although substantial justice was done, and the decision has been since recognised, I must confess it seems to me that the law was rather strained. Arundel Coke, Esq., a gentleman of fortune in the county of Suffolk, and John Woodburne, his servant, were capitally indicted on the "Coventry Act" for slitting the nose of Edward Crispe, Esq., Coke's brother-in-law, "with intent to maim and disfigure him." It appeared in evidence that Mrs. Coke was entitled to a large estate on the death of her brother, Mr. Crispe; that Mr. Coke, to get possession of this estate, resolved to murder Mr. Crispe; that with this view he inveigled Mr. Crispe at midnight into a churchyard; that there Woodburne, by Mr. Coke's orders, assaulted Mr. Crispe with a bill-hook, and gave him several wounds which were believed to be mortal; that he was left for dead in the churchyard; that he was nevertheless carried by some countrymen passing by to Mr. Coke's house, which was close by; that he recovered, — and that one of the wounds he received was a cut across the nose.

The prisoners being called upon for their defence, Coke boldly contended that this case did not come within the Coventry Act, 22 & 23 Car. 2., which enacts that "if any person of malice aforethought, and by lying-in-wait, shall unlawfully slit the nose, &c., *with intent to maim or disfigure*, he shall be guilty of felony without benefit of clergy." Now the act, as was well known from its history, and as was apparent from its terms, was meant to apply to the outrage of maiming or disfiguring a man whom there was no intention to deprive of life, but who was afterwards to gratify the malice of an enemy by carrying about with him, and exhibiting in society, the mark of disgrace set upon his person. The attempt to put a fellow creature to death might morally be a higher crime, but not being the crime described in the statute, it remained as at common law, only an aggravated

delays, that if I had not been an economist in my earlier years, I must have been ruined by the pursuit of justice."— *Life of Bentley*, by Monk, Bishop of Gloucester and Bristol, vol. ii. 211.

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misdemeanour, to be punished by fine and imprisonment. The legislature might be hereafter called upon to make such an attempt a capital offence, but a court of justice could not properly extend to it a statute passed entirely *alio intuitu.* Now here there clearly was no intent that Mr. Crispe should live ridiculous with a mutilated visage; the intention was not to disfigure, but to murder him for his estate; the wound which merely cut the nose was intended, like others inflicted on different parts of his body, to be mortal, and both the accused persons when they left him in the churchyard believed that their real object had been fully accomplished.

However, Lord Chief Justice King ruled that if the prisoners maliciously inflicted a wound which amounted to a slitting of the nose, and which disfigured the prosecutor, the case was within the act, although the real object was to murder, not to disfigure, saying, "There are cases in which an unlawful or felonious intent to do one act may be carried over to another act done in prosecution thereof, and such other act will be felony, because done in prosecution of an unlawful or felonious intent. As if a man shoots at wild fowl wherein no one hath any property, and by such shooting happens unawares to kill a man; this homicide is not felony, but only a misadventure or chance-medley, because it was an accident in the doing of a lawful act: but if this man had shot at a tame fowl wherein another had property, but not with intention to steal it, and by such shooting had accidentally killed a man, he would then have been guilty of manslaughter, because done in prosecution of an unlawful act, viz. committing a trespass upon another's property; but if he had had an intention of stealing this tame fowl, then such accidental killing of a man would have been murder, because done in prosecution of a felonious intent, viz. an intent to steal. Here, although the ultimate intention was to murder, there might be an intermediate intention to disfigure, and one might take effect while the other did not. An intention to kill does not exclude an intention to disfigure. The instrument made use of in this attempt was a bill or hedging hook, which, in its own nature, is proper for 'cutting, maiming, and disfiguring.' The means made use

of to effect the murder must be considered, and the jury will say whether every blow and cut, and the consequences thereof, were not intended—as well as the end for which it is alleged those blows and cuts were given." The prisoners were convicted and executed; but the case may be regarded as a pendant to that before Lord Chief Justice Sir James Mansfield, where a man who gave a horse a draught for the purpose of fraudulently winning a wager on a race, was hanged for killing the horse "out of malice to the owner," whose name he did not know.*



Account of the expences of the Judges on the Northern Circuit in the spring of 1721.

* In the spring of 1720 Lord Chief Justice King went the Northern Circuit with Mr. Justice Dormer, and there lies before me a very curious account of their joint expences. In all its minute details it would be very interesting to circuiteering lawyers, but I can only venture to give a short abstract of it.

| | £ | s. | d. |
|---|---|---|---|
| The expences of the journey to York | 9 | 16 | 7 |
| ——— at York | 43 | 14 | 0 |
| ——— from York to Lancaster | 6 | 6 | 1 |

At Lancaster I copy at length as a specimen:

| | £ | s. | d. |
|---|---|---|---|
| Corporation presented a quarter of beef, a mutton, a veal, and 2 dozen of wine | 0 | 10 | 0 |
| Mr. Lawson, a present of apples | 0 | 1 | 0 |
| The butcher's bill | 0 | 8 | 10 |
| The house bill | 18 | 7 | 7 |
| The vintner's bill | 1 | 12 | 0 |
| The cook's bill | 1 | 13 | 1 |
| The cook's wages | 8 | 0 | 0 |
| The cook's horsekeeping and shoeing | 0 | 7 | 10 |
| Gave to the servants | 2 | 0 | 0 |
| Gave to the Sheriff's coachman | 0 | 10 | 0 |
| Gave to the Sheriff's butler | 0 | 2 | 6 |
| Gave to the poor | 0 | 5 | 0 |
| Gave to the sexton | 0 | 1 | 0 |
| | 33 | 18 | 10 |

| | £ | s. | d. |
|---|---|---|---|
| | 33 | 18 | 10 |
| Journey back | 13 | 9 | 0 |
| Disbursed in all | 107 | 4 | 6 |
| Received for entries, &c, at York | 31 | 13 | 4 |
| ——— for entries and recoveries at Lancaster | 11 | 6 | 8 |
| ——— by 9 fines at York | 3 | 0 | 0 |
| ——— by 34 fines at Lancaster | 22 | 13 | 4 |
| Received in all | 68 | 13 | 4 |
| Disbursed more than received | 38 | 11 | 2 |
| Each Judge's share | 19 | 5 | 7 |

There is endorsed a receipt of this sum from "The R[t] Hon[ble] the Lord Chief Justice King."

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Chief Justice King's opinion on the Sovereign's right to regulate the education and marriages of his grandchildren.

I shall only mention one other opinion of Sir Peter King while Chief Justice of the Common Pleas, which, though most honestly and conscientiously given, greatly pleased George I., and probably smoothed his way to the woolsack. This was on the dispute between the reigning Sovereign and his son, respecting the marriage and education of the royal grandchildren. "The question is," said he, "whether such marriage can be without the consent of the Crown? and I think it cannot. As to marriage in fact in the royal family, nobody can instance any to be made these 500 years without the Crown's consent. Where the Crown has not been consulted, such a marriage has been considered a crime. The case of Lord Brandon, in Henry VIII.'s time, and the case of Lady Arabella Stuart, are strong precedents. If this had not been a crime, the Countess of Shrewsbury would not have been liable to any punishment. The House of Commons' address in 1673 respecting the marriage of the King's nieces was ridiculous if he had no power over it. The instances of marriage apply equally to education. But it is objected, 'this invades the right of the father.' Not at all so; nor is this against the law of God in any sense; for duty to parents is still subject to the public good. Every body knows that King William appointed the tutor of the Duke of Gloucester, son of Princess Anne, and that the House of Commons addressed the King to remove him. Why should the King remove him if he had no power over him? So that I am clear the King has this prerogative." *

Lord Chief Justice King entrusted with the disposal of seats in parliament.

Although Sir Peter King, while Chief Justice of the Common Pleas, escaped the imputation of being a political Judge, it is a curious fact that all this time he was, in a quiet way, one of the greatest boroughmongers in England. By reason of his great reputation in the West, his native country, many proprietors of boroughs there, from patriotic or from jobbing views, gave him the disposal of their seats in the House of Commons. I have perused an immense mass of electioneering correspondence, in which he bears the

* 15 St. Tr. 1222.

principal part, and which is very illustrative of the manners of the times; but which could only now be interesting to the families whose names occur in it. Among his correspondents was the greatest statesman of the eighteenth century, who kept the House of Hanover on the throne, and by his pacific policy added more to the real strength of his country, than if he had gained battles and taken cities. Sir Robert Walpole's letters to Sir Peter King are curious, as they strikingly display the earnestness, energy, cleverness, and tact with which he brought all his negotiations, whether about a borough or a kingdom, to a successful issue. I will give one instance as a specimen. The borough of Berealstone,—as close as Old Sarum,—belonged to the Drakes, and Sir Francis Drake, the then head of the family, gave the management of it to Sir Peter, who had put in, as one of its members, old Horace Walpole. It happened that before Sir Robert had established his ascendency, and while he was carrying on a struggle for power with Sunderland and Stanhope, Horace was to vacate his seat by the acceptance of a sinecure office, to which he was entitled under some reversionary grant; and a rumour had reached the Walpoles that Sir Peter had gone over to their rivals, and was about to return another member for Berealstone. Sir Robert at first contented himself with writing the following letter to Sir Peter, which he was in hopes might have been sufficient:—

Letters to him from Sir R. Walpole about the borough of Berealstone.

"We have received such accounts of Mr. Blathwait's desperate state of health, that we have reason to apprehend my brother Horace's seat in parliament, to whom the reversion of Mr. Blathwait's place is granted, may be immediately vacant. As 'tis to you alone we owe the recommendation to Sir Francis Drake, you will not wonder that I make this early application to beg your friendship again, to have my brother re-elected. I have wrote to Sir Francis Drake, by this night's post, upon this subject, and I must entreat you to second my request, which, I am sensible, will be of the greatest weight and service to my brother; and, therefore, you may be assured we shall be both always ready to acknowledge so great an obligation in the best manner we are able."

Aug. 17. 1717.

CHAP. CXXIV. But no satisfactory answer was received, and the rumour gained ground that a dependent of Lord Sunderland was to be returned. Thereupon Sir Robert penned the following irresistibly persuasive epistle, applying himself, with most inimitable dexterity, to all the motives which, upon such an occasion, could influence the mind of the man he was addressing:—

Aug. 31. 1717. "I hope you will forgive me if I write to you upon this occasion with some freedom and a little importunity. I am not at all insensible what applications will be made to you, and how acceptable it will be to some to give us this disappointment; but I flatter myself that I do not stand in that light with you, being not conscious that I have done any thing that should make it a pleasure to you to put such a slight upon me. Experience teaches every body how little of the regard that he meets with from the multitude is to be ascribed to himself, and how much is owing to his power only; but as I never could look upon you in that view, I cannot persuade myself but friendship, old acquaintance, and a long knowledge of me in my public capacity, was my chief recommendation to you. It is not to be supposed that Sir Francis Drake and yourself may have other friends that deserve as well or better of you than we can pretend to, and that you may have an equal inclination to serve; which, were this a common case, and upon the election of a new parliament, I must admit, would be a reasonable answer; but you will consider that a refusal now is an absolute exclusion of my brother, and should you oblige any body else, it must be done at our expence; and I verily believe you will meet no solicitations that will not be more out of a desire to offer an indignity to me, than to oblige any body else. I will not tire your patience with more arguments. You know the world too well not to be sensible how grievous, to speak plainly, this disappointment must be to me at this juncture, to have my enemies gain this triumph over me. The satisfaction or advantage they can have by it, unless in crossing my expectations, can be no ways equal to the dissatisfaction and concern that, I very freely confess, it would give me. To others, your answer is plain and ready — upon pre-engage-

ments and present possession. To me, I know but one—that you think me no longer worth obliging. After I have expressed myself thus plainly and earnestly to you, I can add nothing but to tell you, that as I am sure this depends upon you alone, to you alone I will ever own the obligation, which, you may plainly see, I do really think as great as you can possibly confer upon me; and if, after this, I should ever be wanting to show you a just sense of it, I should be worthy of the last reproach. I must beg one thing more, that you will give me a direct reply, which, if it is to be in favour of my brother, will be an answer to all other solicitations. I am, very much, your most faithful humble servant,

"R. WALPOLE."

Lord Chief Justice King's disinterestedness in election matters.

It is possible that such a service, at such a pinch, was remembered by Walpole, become sole ruler of the King and kingdom, when, upon the impeachment of Lord Macclesfield, the Great Seal was suddenly to be disposed of. But I must do Sir Peter King the justice to say, that in all the electioneering affairs in which he was engaged, he seems to have acted with honour and disinterestedness. He makes no corrupt bargain for others, and he had no ambitious views for himself. His great object was to support the Whig party and the Revolution settlement.

## CHAPTER CXXV.

### CONTINUATION OF THE LIFE OF LORD KING TILL THE DEATH OF GEORGE I.

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His unexpected promotion to the woolsack.

On what strange chances and vicissitudes does official promotion depend! When Sir Peter King had been ten years Chief Justice of the Common Pleas, he and his friends thought only of his terminating his honourable, but comparatively obscure, career in this office, leaving a name only to be found in musty black letter law Reports, or in chronological tables of the twelve Judges. But a madness seized the nation, during the South Sea Bubble, unknown before or since, till the coming up of railways; the Masters in Chancery caught the infection, and, losing large sums of suitors' money intrusted to them, became defaulters, and attracted public notice to the manner in which they were appointed, and to the abuses in their department of the Court. Suddenly a storm of indignation arose against the Lord Chancellor, who had only been a little more rapacious than most of his predecessors; he who, a few weeks before, had been in the plenitude of power and popularity, was driven to resign; there being no one who could conveniently be at that moment appointed to succeed him, the Great Seal was put into commission; the Chief Justice of the Common Pleas, having more leisure than the Chiefs of the other Courts in Westminster Hall, Sir Peter King, was appointed Speaker of the House of Lords; there he conducted himself with such dignity and propriety during an impeachment, that he was made Lord Chancellor and a Peer; so he became a character in English history, and is regarded as the founder of a distinguished family in the nobility of England.

He is Speaker of the House of Lords.

Sir Joseph Jekyll, and his brother Commissioners, being appointed on the 7th of January, 1725,—in obedience to the royal admonition *, applied themselves diligently to business,

* Ante, p. 535.

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but found the concerns of the suitors in a state of deplorable confusion from the deficiencies of the Masters, and were greatly perplexed and divided in opinion with respect to the remedies which ought to be applied. Sitting daily during Hilary and Easter Terms, and in the intervening vacation, their time was almost wholly occupied with motions respecting the abstraction, the replacing and the securing of trust money.

Jan. 21. 1725. Impeachment of Lord Macclesfield.

Meanwhile the trial of the Earl of Macclesfield proceeded. When parliament assembled after the Christmas recess, Sir Peter King took his place on the woolsack as Speaker of the House of Lords, leaving his puisnies to do the ordinary business of the Court of Common Pleas, and questions of difficulty being reserved for his advice. On the 13th of February a message from the Commons was announced, and Sir Peter King having put on his hat, Sir George Oxenden, attended by many members, "in the name of all the Commons of England, impeached Thomas Earl of Macclesfield of high crimes and misdemeanours, declaring that the House of Commons would, in due time, exhibit particular articles against him, and make good the same."

Sir Peter, not being a Peer, of course had no deliberative voice, but during the trial, as the organ of the House of Peers, he regulated the procedure without any special vote, intimating to the managers and to the counsel for the defendant when they were to speak, and to adduce their evidence. After the verdict of *Guilty*, he ordered the Black Rod to produce his prisoner at the bar, and the Speaker of the House of Commons having demanded judgment, he, in good taste, abstaining from making any comment, dryly, but solemnly and impressively, pronounced the sentence which the House had agreed upon.*

Disposition of the Great Seal after Lord Macclesfield's conviction.

The Lords Commissioners were still going on very indifferently, and complaints becoming loud against their inefficiency, Walpole felt that, to secure the popularity which he had justly acquired by sacrificing the late Chancellor to the public indignation, another enjoying the public confidence

* 16 St. Tr. 801. 938. 1080. 1258. 1265. 1330.; ante, p. 553.

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should be appointed. Sir Philip Yorke, the Attorney General, who had made such a brilliant start, was not much turned of thirty; and a head of the law, and keeper of the King's conscience so youthful, would have been the subject of gibes instead of reverence. Sir Clement Wearg, the Solicitor, had distinguished himself much in supporting the bill for the banishment of Atterbury, and as manager of the House of Commons in conducting the impeachment of Macclesfield; but though considerably senior in age, and in standing at the bar, he was considered of inferior ability, and there were strong objections to putting him over the head of the Attorney General.* The Serjeants and King's counsel offered no better choice. Sir Joseph Jekyll, the Master of the Rolls, had rather lost reputation by acting as a Commissioner of the Great Seal. A selection was to be made therefore of a common law Judge, and none could have a higher character than Chief Justice King, whose conduct during the impeachment both parties had concurred in praising.

Sir Peter King made Lord Chancellor and a Peer.

Accordingly he was fixed upon, and it was agreed that he should at once be declared Lord Chancellor without being Lord Keeper; that he should simultaneously be raised to the Peerage (likewise an unusual rapidity of honour), and that he should receive a salary of 6000*l.* a year payable out of the post office, and 1200*l.* a year payable out of the Hanaper office, in consideration of the sale of offices in the Court of Chancery being adjudged to be illegal.

Lord King's Diary.

I have now the advantage of a Diary which Lord Chancellor King on his new appointment began to keep in short hand, without any view to authorship, and which has been recently printed by his family for private circulation. From this I shall occasionally make extracts, and at other times I shall refer to it as the authority for my narrative. Thus he commences: —

Lord King takes his seat in the House of Peers.

"1725. — *Tuesday, June* 1. Monday, the 31st May, being the last day of the sitting of Parliament, I was introduced into the House of Lords, as Lord King, Baron of Ockham, in

* Life of Sir Clement Wearg, by Duke, 1843.

the county of Surrey. My introducers were Lord Delaware and Lord Onslow. Baron's robes, lent me by Lord Hertford. And this day at noon I went to St. James's, and being called into the King's closet, he delivered the Seals to me as Lord Chancellor: and soon after I went to the council-chamber, carrying the Seals before him. The first thing that was done was to swear me Lord Chancellor, after which I took my place as such. The King then declared that he was going beyond sea, and had appointed a regency, whose names were then declared. *

Sworn in Lord Chancellor.

"2*d.* — In the morning I received the visits of several Lords and others of my friends, and at noon went to wait on the Prince and Princess, and kissed their hands. This day I surrendered my place of Chief Justice of the Common Pleas.

"3*d.* — About ten o'clock I waited on the King to have two bills signed, the one for Eyre to be Chief Justice of the Common Pleas, the other for Gilbert to be Chief Baron, and as soon as I left him he went on his voyage to Hanover. And inasmuch as several of the nobility were to wait on him to Greenwich, so that they could not attend me, according to custom, to Westminster Hall, I did from thence take an occasion to go privately to Westminster Hall, which I did this day, being a day of motions. I here took again the oath of a Chancellor, which the Clerk of the Crown read, and the Master of the Rolls held the book."

The new Chancellor probably abstained from all parade in his installation, out of delicacy to the melancholy condition of his predecessor who was now a prisoner in the Tower of London. Had he chosen to have the usual procession to Westminster Hall, I doubt not that, notwithstanding the

* "1st June, 1725. His Majesty having received the Great Seal of Great Britain from the Lords Commissioners this day, and having been pleased to deliver it the same day to the Right Honble. Peter Lord King, with the title of Lord Chancellor of Great Britain, his Lordship on Thursday, the 3d of the same month, came privately from his house in Norfolk Street to the Chancery Court in West[r] Hall, and did then in the Court of Chancery take the oaths appointed to be taken by the 1[st] of William & Mary, and the oath of Lord Chancellor, the Master of the Rolls holding the book, and the Clerk of the Crown read the said oaths." — *Roll*, 1714—1727.

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Anticipations that Lord King would be a great Equity Judge.

King's absence, it would have been one of the most splendid seen for many years, as his promotion was universally approved of, and there was a general expectation that he would turn out to be one of the greatest Chancellors that had ever sat upon the woolsack. He himself did not labour under any serious misgivings, having long been such a complete master of his work on the common law bench.

Public disappointment.

However, there was soon considerable disappointment experienced by the public as well as anxiety by himself. He succeeded a Judge who not only had a fine legal understanding, but to whom the doctrine and practice of the Court had become "familiar as his garter." Lord King had not only never practised in the Court of Chancery, but there seeming no possibility of his leaving the Common Pleas during his life, he had been contented with well understanding "pleading in actions real and personal;" and he had neither read Chancery Reports nor paid the slightest attention to Chancery proceedings. He now saw daily pleading before him Yorke, Talbot, Wearg, and other counsel regularly trained in the Court,—and he found himself in the painful and humiliating situation of knowing much less of the subject than the advocates on whose arguments he was to decide. He was even in a more perilous predicament than a man at once taken from the bar and placed in a judicial situation for which he is not quite prepared; for by presiding ten years over the phlegmatic Serjeants, he expected always to be treated with extreme deference, and he was apt to show impatience and peevishness if an ill-considered opinion thrown out by him was roughly handled. He was much frightened by the approach of "a Seal," and he had little sleep the night before the dreaded day when he was to be assailed by all manner of motions, of which he had no previous notice. He could pretty well manage the regular hearing of a cause—when the bill and answer were opened very tediously, as was then the custom, — the evidence was all read at full length — counsel were heard on both sides,— and time could be taken to consider the decree. He could even dispose of Pleas and Demurrers with tolerable composure, as a little patience and discreet reserve, to conceal ignorance, might lead to a shrewd and

tolerably safe guess at the right conclusion. But when there came motions for injunctions and for sequestrations, and for the appointment of receivers and for the payment of money into Court and out of Court, and for divers other things about which the little he had read in his youth had long faded from his memory, and which he was obliged to decide off-hand, — he sadly repented that for "the thorns of Chancery" he had ever exchanged "the cushion of the Common Pleas."

Lord King's miseries and regrets as Chancellor.

Although his perception was not so quick as it had been, and all his faculties were beginning to be a little rigid,—as soon as he discovered his deficiencies he nobly struggled to supply them. Disregarding amusement and recreation, and regardless of health and even of life itself, he boldly began and he steadily pursued a course of reading to qualify himself for the discharge of his duties as an Equity Judge. There were then hardly any published Chancery Reports, there were no systematic treatises on Equity pleading or practice, and there was little for the Equity student in print beyond the Heads "Subpœna" and "Chancery," in the general ABRIDGMENTS. But Lord King, besides confidentially conversing with some practitioners in his Court, borrowed MS. treatises respecting Chancery, and MS. reports of the decisions of former Chancellors, which were in private circulation. By a diligent perusal of these he made himself a very pretty Equity lawyer, and he had a tolerable notion of the newest fashions which his predecessor had introduced. Still he never could remove the impression which he had made at the commencement of his Chancellorship. It is said that there were more appeals from the Court in his time than during any equal period, either before or since, and that there were more of his decrees reversed than there have ever been of any other Chancellor. But the fate of appeals depends greatly on the general reputation of the Judge appealed from, and the temper of the Judge or Judges appealed to. Lord King was not, like Lord Hardwicke, the only law Lord, so as to make an appeal from the Court of Chancery to the House of Lords, "ab eodem ad eundem," and Lords Lechmere and Trevor were not

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sorry to have an opportunity of civilly pointing out his mistakes.

Reading Lord King's Equity judgments, as they appear in Peere Williams *, I believe they will be generally esteemed sound, and they are to be praised for the same clearness and precision which distinguished him as a common law Judge.

Lord King's decisions.

No very important case came before him in the Court of Chancery, and he cannot be said to have added very materially to our Equitable code, but a few of his decisions may be found generally interesting. — He settled the rule that a will of lands in England, though made abroad, must be signed by three witnesses, according to the English Statute of Frauds, a will of lands being to be governed by the *lex loci rei sitæ*, and a will of personalty by the *lex domicilii.*†

Will of lands made abroad.

Pin-money.

Where by a marriage settlement the wife is entitled to pin-money, he decided that if the husband and wife live together, and he maintains her, she is not entitled to claim the arrears of her pin-money.‡

Provision for a woman seduced.

A man having seduced a modest girl, and had a child by her, entered into an executory agreement to pay 2000*l.* to be laid out in purchasing an annuity for the mother and child. When a bill was filed for a specific performance of this agreement after the child's death, objection was made that, this being matter of *turpitude*, Equity ought not to interfere. *Lord Chancellor King.* — "If a man does mislead an innocent woman, it is both reason and justice that he should make her reparation; but this case is stronger in respect of the innocent child whom the father has occasioned to be brought into the world in this shameful manner, and for whom in justice he ought to provide, and though the child be now dead, yet the case is to be taken as it was when the agree-

* The cases heard before Lord Chancellor King from 1726 to 1730 are also published by a reporter of inferior merit, named Moseley, whose volume has generally been *vilipended.* However, in Mr. Hargrave's copy of it in the British Museum is to be found the following notice: — "Lord Mansfield, in 5 Burr. 2629. says, 'this book should not be quoted;' and in *Myddleton* v. *Lord Kenyon*, Lord Chancellor Loughborough observed to Mr. Fonblanque, upon his citing a case from it, 'that he had not heard it cited.' But I took the liberty of saying that 'I had often heard it cited, and that I had found very good matter in it.'"

† *Coppin* v. *Coppin*, 2 P. W. 293. ‡ *Thomas* v. *Burnet*, 2 P. W. 341.

ment to provide for them was signed, and then the child was living."*

Settlement on married women.

Lord Chancellor King established the very salutary rule, that although, by the law of England, all personal property bequeathed to a wife belongs to her husband, Equity will not aid in compelling payment of the legacy without seeing a settlement of the property made for the wife's benefit.† What seemed a more doubtful rule laid down by him has been since adhered to, that *lis pendens* shall be tantamount to actual notice, — so that a purchaser for valuable consideration may lose the property for which he has paid, having bought it from a person who had a legal right to sell, — if a suit of which he was ignorant had been commenced to establish an equitable interest in it.‡

"Lis pendens" notice to all the world.

Marriage of a ward nine years old.

A curious case came before him, showing that towards the middle of the last century the custom of marrying infants of tender years, which had formerly been very common, still prevailed in England. One of several guardians to an heiress took her from a boarding school when she was only nine years old, and married her to his own son who had no estate. The Lord Chancellor, on motion, ordered this guardian to bring into Court the infant whom he had married to his son, and that he, the son, and the infant should attend. All attending, the counsel for the application pleaded, "that this guardian having, in so perfidious a manner, broken his trust, and married his ward to his own son, who was worth nothing, the Court of Chancery, the guardian of all infants with the superintendency and cognizance of all trusts, ought to commit him, and not suffer the girl, now but nine years old, to continue to cohabit with her husband, who ought not to be indulged with opportunities of inveigling her, and preventing her from disagreeing to the marriage when she should come to the age of twelve years, which it would be for her interest to do." *Lord Chancellor.* — "The infant girl never having been under the care of the Court, nor committed by the Court to the care of this guardian, I do not think he can

* *Marchioness of Annandale* v. *Harris*, 2 P. W. 434. This decree was affirmed on appeal by the House of Lords, 1 Brown's P. C. 250.

† *Brown* v. *Elton*, 3 P. W. 202. ‡ *Sorrell* v. *Carpenter*, 2 P. W. 482.

be considered guilty of a contempt of Court; but then it is a very ill thing in him to marry this child to his own son, and he is punishable by an information. I will, therefore, have him bound over with sureties to appear to answer an information to be filed against him by the Attorney General. As for the child, let her be handed over by this knavish guardian to the other guardian named in her father's will, who, it is to be hoped, will take proper care of her, and do what is for her advantage in advising her to confirm or to renounce the marriage."*

Writ de ventre inspiciendo.

I will only mention one other case which occurred soon after, and illustrates the manners of the age. Sir John Chaplyn, a young Baronet, nineteen years of age, of great estate in Lincolnshire, was drawn in by a "bumbailiff" in Clare Market to marry his daughter, a girl of sixteen, and to make a will bequeathing all his personal estate to her. In two months he died, leaving three sisters who were his heirs at law, if there were no issue by this marriage. The widow pretending to be pregnant, the sisters petitioned for a writ "*de ventre inspiciendo*," and that "residing at her late husband's house in Lincolnshire, this might be as her Castle wherein she should be inclosed†, and continue until the time of her delivery, and that some woman might be always resident with her both before and at the birth." Her counsel argued "that she was guilty of no crime in marrying Sir John, who was of sufficient age to choose a wife for himself, and who might think beauty and virtue a sufficient portion, especially when his fortune had put him above the want of money; that, as it had not appeared any fraud or collusion was intended, it was very unreasonable to suspect she would be guilty of imposing a false child on the family; that it would be a hardship on a lady of such tender years to send a jury of matrons to inspect her; that she, being now with child, the inspection might be of dangerous consequence and occasion a miscarriage, a thing possibly wished for by the

* *Goodall* v. *Harris*, 2 P. W. 561.

† At common law a jury of matrons must be impannelled, and if they find the widow with child, she is to be shut up in a castle, where the sheriff of the county keeps her in safety till she is delivered.

other side; that the "Castle" in Lincolnshire, was an old house in the fens, much out of repair; and that she having no relations or friends in that country, it would be cruel to imprison her there."—*Lord Chancellor.* "I take this writ "*de ventre inspiciendo*" to be of common right—for the security of the next heir, to guard against fraudulent or suppositititious births. But as it may be a hardship to oblige the lady to live in Lincolnshire far from her relations and friends, and since the marriage appears to have been in March last, consequently no probability of her being brought to bed before Christmas, and as her father consents she shall be in town before Michaelmas, and reside in St. James's parish in Middlesex, let the writ '*de ventre inspiciendo,*' issue at Michaelmas, directed to the Sheriff of Middlesex. In the mean time, the present heirs may send two women at reasonable times to see whether she is with child, they giving reasonable notice before-hand, so that this may be attended with as little inconvenience as possible to Lady Chaplyn. There is no occasion to execute the writ with all the strictness of the common law, provided people of skill from time to time have access to her, and may be present at the birth."*

I shall afterwards have occasion to consider the beneficial changes which Lord King introduced in the Masters' offices in the administration of the funds of the suitors, and other departments,—which place him high in the rank of law reformers. But we must now survey him in the exercise of his political functions.

Lord King one of the Council of Regency.

Immediately after his appointment the King had gone to Hanover, leaving him and other great officers of state "Lords Justices." They had their first meeting as soon as news was received of the King's arrival in Holland; there was afterwards a formal assembly of the whole body once a fortnight, and a committee (of which Walpole was chief) met from time to time as occasion required. The first question they had to deliberate upon was the propriety of granting a pardon to

* Exparte Aiscough, 2 P. W. 391. This writ continues to be granted not only to the heir but to a devisee, either for life in tail or in fee. 1 Cox, 297.; 4 Brown, C. C. 90.

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Lord George Murray, who had been attainted when only eighteen years of age, and had petitioned for mercy. The Chancellor would only say that there was nothing in law to obstruct a pardon, but refused to give any farther opinion,—on the ground that he was not sufficiently acquainted with the facts. The Duke of Argyle was strongly for rigour, "because this man's treason was attended with perfidy in deserting the King's troops and running away to the rebels, and if he were pardoned others would immediately make the same application." Walpole, however, took the merciful side, and carrying a majority with him, a letter was ordered to advise the King to pardon him.*

Commissions of the peace for Scotland.

Much consultation took place respecting the granting of commissions of the peace for Scotland, then in a very distracted state on account of the Malt Tax. The Earl of Islay "was called in and gave an account of having made up lists for all the counties,—which had taken three months in preparing, and which he vouched were made up with great exactness and attention to the gentlemen to be appointed." "On this," says the Diary,—"I told the Regency that though in England the Great Seal would be a little more consulted in matters of this nature, yet, considering the urgency of affairs, if their Excellencies would order me to pass those commissions of the peace as now settled, I would do it. Thereupon they ordered me to pass them."†

Scheme to exclude Frederick, afterwards Prince of Wales, from the succession to the throne.

Then comes an exceedingly curious entry.—"*June* 24. Sir Robert Walpole went with me to Ockham, and lodged there the night. He entered into a free discourse with me about foreign affairs." [After a copious account of the disputes with Spain, &c., no longer interesting, he adds]:— "Another negotiation had lately been on foot in relation to the two young Princes, Frederick‡ and William.§ The Prince‖ and his wife¶ were for excluding Prince Frederick from the throne of England, but that after the King and Prince, he should be Elector of Hanover, and Prince William

* June 5. † July 1st. ‡ Afterwards Fritz, Prince of Wales.

§ Afterwards Duke of Cumberland, the hero of Culloden.

‖ The then Prince of Wales, afterwards George II.

¶ Afterwards Queen Caroline.

King of Great Britain; but that the King said it was unjust to do it without Prince Frederick's consent, who was now of age to judge for himself, and so this matter now stood. But that Sir Robert Walpole had told the King that if he did not in his lifetime bring over Prince Frederick, he would never set his foot on English ground, so that he did not know whether the King, when he returned from Hanover, would not bring that Prince with him." This is a curious proof of the early dislike of George II. and Queen Caroline to their eldest son, Frederick, Prince of Wales. Lord King must have looked forward with some dismay to the dissensions in the royal family, which had proved so perilous to his predecessors. But he contrived to retain the favour of the reigning sovereign, without giving fresh offence to the heir apparent; and although Prince Frederick for some unaccountable reason was not brought over from Germany during the present reign, George I. while alive, thwarted the plan for disinheriting his grandson, and on the accession of George II. the national cry was so strong against continuing to rear as an alien him who was to fill the throne of England, that within two years it was found necessary to send for him. He had his revenge by perpetually disturbing the government of his father, till the joyful exclamation was uttered—"Fritz is dead!"

Transaction of business by the Regency in the King's absence.

During the King's absence in Germany, the Chancellor was at the head of the Regency.* The Lords Justices, besides carrying on routine business at home, were occupied with intricate foreign negotiations (now happily uninteresting), with a view to the aggrandisement of his Majesty's hereditary dominions by the addition of some little patches of territory to them; but some of the Chancellor's entries in the "Diary" are worth copying, as showing how business was

* I do not believe that he ever enjoyed much political power, but in foreign countries he was regarded as a very important personage. I have now in my hand a letter to him from a Frenchman of the name of Neville, giving him some important information — thus addressed:

"His Excellence Milor Piter King
hig Cancellor of Great brittagne &
one of milors of regence
london."

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transacted between his Majesty and his representatives. "*July* 26.—Received by Lord Townshend from the King a warrant to pass a commission under the Great Seal to Lord Townshend to treat and contract with such princes and states as the King should direct, which I accordingly passed under the Great Seal." "29.—The Duke of Newcastle was with me to explain the meaning of the commission to Lord Townshend, which was that the Emperor and King of Spain, living now in strict amity, there was a necessity to enter into a league with other powers to preserve the peace of Europe; that France and the King of Sardinia were ready, and it was hoped that the Protestant Princes of the Empire and Holland would likewise come into it." "*Sept.* 7. — Tuesday night, a messenger came to me (at Ockham) from Mr. Delafaye with ten instruments from Hanover, with the King's warrant countersigned by Lord Townshend to fix the Great Seal to them. I returned back word by the messenger that I was coming to town, and would there do what was necessary." "8. Wednesday at night I came to town. The Duke of Somerset came to me, and I asked him, when he was in the Regency and the King abroad, as had happened in King William's time and the King made a treaty abroad, whether this were communicated to the Regency or Council here? or whether upon the King's warrant from beyond the sea, the Great Seal was affixed to them here? He said it was always the custom, on the King's warrant, for the Chancellor to affix the Great Seal. The next day Mr. Delafaye told me this was always the custom, and that it would be absurd to lay them before the Regency, because the King had agreed and signed them already. I therefore put the Seal to them."

Looking to Wolsey's impeachment, and other sources of constitutional information, respecting the exercise of the royal authority, the result seems to be that the Great Seal can only be used within the realm, but that it may lawfully be applied on the warrant of the Sovereign signed beyond the seas, and that the Regent, guardian of the realm, or Lords Justices, are bound to obey any directions they may receive from the Sovereign, either before his departure or during his

absence abroad, but that in all matters respecting which they are left without instructions, their act is equally valid and potent as if done by the Sovereign in person. It is probable that in after times there will be no deputation of the royal authority, unless to open or prorogue parliament, or to give the royal assent to bills.

Claim by the Chancellor to exercise supervision in the negotiation of foreign treaties.

I will conclude this head with an entry after the King's return, which proves that the Chancellor, who used to be of yore the sole foreign secretary, still imagined that as he was to affix the Great Seal to Treaties, he was to exercise a superintendence over foreign affairs: "*Thursday, March* 10. 1726.—At the desire of Lord Townshend I was this evening at the Duke of Devonshire's, with the Dukes of Argyle and Newcastle, and Sir Robert Walpole." [He then gives a long account of a written declaration signed by the Landgrave of Hesse, promising to supply 8000 foot and 4000 horse for the defence of Hanover.] "Lord Townshend saying, that 'this was not properly a treaty but only a declaration by the Landgrave, on what terms he would furnish the King with so many soldiers, and that there was nothing more to do than for the King to show his approbation by a ratification under the Great Seal,' I thought that 'the form of this instrument made no alteration in the substance, and that this was really nothing else than a treaty, and that there was no instance wherever the Great Seal made a treaty by itself, or ratified a treaty which was not first agreed to by some minister or commissioner.' And thereupon it was agreed that inquiry should be made in the Secretary's office whether there had been any thing of this nature before; and on inquiry the next day it being found that there was none such, it was agreed that Diemar and Lord Townshend should both mutually sign the agreement by way of treaty, and that after such signing the ratification should pass according to the usual forms. And I having hinted to Lord Townshend *that when I was to be concerned in the conclusion of an affair it was but reasonable I should know the beginning and the progress;* he did send me the copy of this matter drawn up in the form of a treaty between him and Diemar."

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Lord Chancellor King in the House of Lords.

Lord King took his place as Chancellor in the House of Lords on the 20th of January, 1726, and then read the royal speech, the King not even repeating the effort he made when he first came to the throne, to say, in English, that "I have ordered my Lord Chancellor to declare the causes of calling this parliament." The custom was now introduced of the two Houses echoing the words of the speech, and on this occasion the address was carried unanimously. Opposition was now almost annihilated, and Sir Robert graced with the order of the Bath, which he revived to increase his patronage, and with the order of the Garter, the importance of which he enhanced by deigning to accept it,—was now in the zenith of his power, although not of his glory, for as yet he had not encountered in mortal strife Pulteney, Carteret, or Pitt. There was not a division in the House of Lords during the session, the entire repose of which was only occasionally interrupted by that luckless wight Lord Lechmere, who, struggling in vain for office and fame, occasionally made motions from habitual restlessness, but met with so little support that the Lord Chancellor had no trouble beyond putting the question, and declaring that the "Non-contents" had it.

May 15. 1727.

The following session was equally tranquil, and at the close of it the Lord Chancellor read George I.'s last speech to Parliament, thanking them for the zeal and harmony with which they had despatched the public business. His Majesty, having appointed Lords Justices, immediately set off for the Continent, and never again touched British ground, dying, on the 10th of June, on his way to Osnaburgh, and being interred, with his ancestors, in Hanover.

Death of Geo. I. June 11. 1727.

Law reform during his reign.

During his reign of thirteen years, the public attention was so completely devoted to the struggle for the throne between the old and new dynasties, that no regard was paid to legal reform. Lord Somers's "Statute of Jeofails" continued the most recent attempt to correct the abuses of Westminster Hall. The penal code had been rendered more severe by the Riot Act, and by several fiscal regulations encroaching on the liberty of action which had formerly pre-

vailed in England. Even the impeachment of Lord Macclesfield had produced little beyond salutary exposure, no measures being yet taken effectually to prevent the recurrence of similar evils. But Lord Chancellor King was not forgetful of his duty to struggle for the improvement of our institutions; and, amidst the difficulties which surrounded him, he afterwards accomplished in this department as much as could reasonably be expected from him, and more than was attempted by his successors during the rest of the eighteenth century.

# CHAPTER CXXVI.

## CONCLUSION OF THE LIFE OF LORD CHANCELLOR KING.

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THE Lord Chancellor's own Diary will best introduce his proceedings in the new reign: —

A.D. 1727. Accession of Geo. II.

"*Wednesday, June* 14. 1727. About five in the evening I had a letter from Sir R. Walpole, informing me that the King was dead, and desiring me to meet him immediately at the Duke of Devonshire's.* I went there immediately, and found that Sir R. Walpole, on receipt of the news from Lord Townshend, had instantly gone to Richmond and acquainted the Prince with it, and that thereupon the Prince had resolved to be in town as fast as he could that evening. In the mean time we prepared, by the Attorney and Solicitor General, the draft for proclaiming the King, and settled the other things necessary to be done. The King, in the mean time, came to town, and sent us word that he was ready whenever we were ready to wait on him. Accordingly, we who were at the Duke of Devonshire's, except the Duke himself, who had the gout, went to Leicester-House, and there being joined by several others of the nobility, we sent in to the King to desire an audience: and although the Archbishop was present, yet I made a short speech to the King, according to agreement, setting out the great sorrow we were under by the unexpected death of the late King, and that nothing could relieve or mitigate it, but the certain prospect of happiness under his future administration: and that being now become our liege Lord, we desired leave to withdraw into the council-chamber to draw up a form of a proclamation for proclaiming him, and

* The original of this letter, in the handwriting of Sir R. Walpole, lies before me:

(Copy.)

"My Lord, Wedn. 5 o'clock.

"The melancholy news is just come of the King's death. Pray hasten away to my Lord President's, where I wait your coming.

"Your's, &c.
"R. WALPOLE."

to sign it as usual; which being granted, we retired into the council-chamber, and there the form, which we had before agreed upon, was produced, engrossed, and thereon all the Lords of the Council then present first signed it. Then the doors were opened, and the Peers in the outer room were desired to walk in and sign it, which they did; then it was delivered to the gentlemen in the outer room to sign as many as they pleased. And after it had been some time out the Lords of the Council sent for the parchment, which being returned, secret intimation was given to the King that the Council were ready to receive him. Whereon he immediately came in, and seating himself in the royal chair he there read the declaration, that was printed at the desire of the Lords of the Council: it had been prepared at the Duke of Devonshire's by Sir R. Walpole and the Speaker. After that orders were given for the proclaiming of the King the next morning at ten o'clock, and several other orders of course were made, which are to be seen in the council-book, particularly one for proroguing the Parliament, being now, by reason of the King's demise, immediately to meet. — *Thursday*, 15. A little after ten I came to Leicester House, and the heralds and all being ready, about eleven the Archbishop of Canterbury, myself, and other Lords, went into the yard before Leicester House, and there the heralds proclaimed the King, we being there on foot uncovered. As soon as that was done, we went into our respective coaches, and in the street before Leicester House the King was again proclaimed. From thence we went and proclaimed him at Charing-Cross, Temple-Bar, the corner of Wood Street, and the Royal Exchange. After that I came home, and about four o'clock got to the House of Lords, where the Parliament met, and all the Lords present taking the oaths, I then informed the House that I had a commission from the King to prorogue the Parliament to the twenty-seventh instant, which was the day it stood prorogued to in the late King's time. And thereon the Lords Commissioners seated themselves as usual in such cases, and on message by the Usher of the Black Rod, the Speaker and Commons, coming to the bar, the commission was read, and I declared the Parliament prorogued to the

twenty-seventh instant. From hence I went to Leicester House, a Council being appointed this evening, and there several other orders were made, which had been omitted the evening before, and particularly the same proclamation which had been issued out upon the death of Queen Anne on the foundation of the act *Sexto Annæ* for continuing persons in their offices, and requiring them to take the oaths according to the said act. — *Friday, 16th.* A Council in the evening, wherein I delivered up the Seals to the King, who re-delivered them to me as Chancellor, and thereon I was sworn Chancellor in Council. — *Saturday, 17th.* I was sworn Chancellor in the Chancery Court in Westminster Hall, and this day I swore all the Judges *de novo,* and the King's Council, and some of the Welsh Judges pursuant to the act of parliament, *Sexto Annæ.* — *Sunday, 18th.* Received the sacrament at Ockham to qualify myself. — *Tuesday, 20th.* Took the oaths in the King's Bench; went to Kensington and presented the Judges, both English and Welsh, Masters in Chancery, and the King's Council, who all kissed the King's and Queen's hands. — *Saturday, 24th.* At a Cabinet Council at Lord Townshend's office the King's speech settled. There then arose a question whether the King was to take the test on his first coming to parliament next Tuesday, and the Lords desired me to look into that matter, and I promised them to do it by Monday morning, and lay what I could find before them for their determination. — *Monday, 26th.* At Lord Townshend's in the morning, where were present Harcourt, Trevor, Walpole, Newcastle, the Speaker, Townshend, Godolphin, and myself, and I stated the matter to them." [After discussing the matter at great length, he adds:] "On these reasons the Lords all present agreed that there was no need for the King now to take the test; but he might do it at his coronation if that intervene before a new parliament should be chosen."

Lord King in favour with Geo. II.

Lord King might consider himself in luck to retain the Great Seal under him whose pretensions to educate his children and to consent to their marriage he had treated so unceremoniously; but George II. would not avenge the injuries of the Prince of Wales, and he now became reconciled to doctrines which would add to his power over his own son,

whom he so much detested. He therefore received the Chancellor very graciously, saying: "Your Lordship has always shown yourself, and no doubt will continue to show yourself, a zealous servant of the Crown, and a warm friend to the Protestant succession." His Majesty, however, made an attempt to usurp patronage, which we learn from the Chancellor's Journal, was manfully and successfully resisted: "The King, when he came to the throne, had formed a system both of men and things, and to make alterations in several offices, as to their power, and particularly as to mine. About July 8th he told me that he expected to nominate to all benefices and prebendaries that the Chancellor usually nominated to. I told him, with great submission, that this was a right belonging to the office, annexed to it by act of parliament and immemorial usage, and I hoped he would not put things out of their ancient course. He told me my Lord Cowper* told him, that in the latter part of his Chancellorship, in the Queen's time, he laid before the Queen a list of all persons whom he recommended to benefices, that she might be satisfied they were good Churchmen. I did not give up this point, but directly desired him to consider it; and afterwards, at another time, he told me that I should go on as usual.—*Sunday*, *July* 16*th*. I then saw him again: he seemed now very pleasant, and I gave him a list of all the Judges, both in England and Wales, King's Serjeants, and Council, and other subordinate officers in the law, in his invariable nomination, and told him, that as to those which were not Judges in England, they were many of them Parliament men, and some now stood again. So he ordered me to make out *fiats* for such of them as were like to be Parliament men."

Attempt of the King to encroach on the patronage of the Chancellor.

The system which his Majesty then proposed for the appointment of magistrates, is very amusing:—"He also told me, now that he had heard that I had acted prudently

* Extract from Lord Cowper's Diary.—"*November* 13*th*, 1705. I had the Queen's leave to bestow my livings of 40*l*. and under without consulting her.

"*June* 25*th*, 1706. At Cabinet. Before it begun I had discourse with the Archbishop about disposing of the livings in my gift, and my having promised the Queen to present, as she directed, in all the valuable ones; he said he feared it would be under a worse management than under the late Keeper's servants, by the importunity of the women and other hangers-on at court, and promised to endeavour to get that matter into a proper method."

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Geo. II.'s instructions for the appointment of magistrates.

in his father's time, as to the commission of the peace,—that his pleasure was, that I should put into the commission of the peace all gentlemen of rank and quality in the several counties, *unless they were in direct opposition to his Government;* but still keep a *majority* of those who were known to be most firmly in his interest, and he would have me declare the former part as his sentiment."

Lord King's Journal gives an interesting statement of the manner in which it was then conceived that Walpole had established his ascendency, which had been for some time endangered by the King's old partiality for Sir Spencer Compton, now Speaker of the House of Commons:

Sir Spencer Compton and Sir Robert Walpole.

"On the King's coming to the throne, he ordered Sir R. Walpole and Sir S. Compton to confer together about his affairs, and let him know what they thought fit to be done for his service from time to time. Sir R. Walpole seemed so sensible that he should be laid aside, that he was very irresolute what to do, whether to retire into the House of Lords and give up all business, or whether to continue. But the King and the Speaker persuading him to continue, he went on, and undertook what the King expected from him, as to the Civil List and the Queen's jointure, which he forwarded in Parliament. During which time, by his constant application to the King by himself in the mornings, when the Speaker, by reason of the sitting of the House of Commons, was absent, he so worked upon the King, that he not only established himself in favour with him, but prevented the cashiering of many others, who otherwise would have been put out. The Speaker for some time came constantly to the King every afternoon, and had secret conferences with him; but in about three weeks' time, he saw his credit diminish, and so left off the constancy of his attendance. The Tories and others, who expected great changes and alterations, finding these things not to answer their expectations, began to retire about the end of the short session of parliament, that was held for settling the civil list."—It has since appeared, however, that the Lord Chancellor was not altogether in the secret as to the manner in which the premiership was then settled. Walpole re-

ceiving Lord Townshend's despatch announcing the death of the late King, hastened to the palace of Richmond, where he was admitted to the bedroom of the Prince, who had retired for his *siesta*. Kneeling down, and kissing his hand, the anxious minister inquired "whom his Majesty would be pleased to appoint to draw up the necessary declaration to the Privy Council," being sanguine in the hope that the choice would fall upon himself. "COMPTON," answered the King shortly, and Walpole withdrew in the deepest disappointment. This "best of Speakers," however, was so little acquainted with real business, that he confessed his incapacity to perform the task imposed upon him, and begged Walpole to draw up the declaration for him. Sir Robert willingly complied, and wrote the declaration, which Compton carried to the King. For a few days a change of administration was confidently expected; but the weakness of the favourite was so apparent, that Walpole said confidently to his friend, Sir William Younge, "I shall certainly go out, but let me advise you not to go into violent opposition, as we must soon come in again." He continued uninterruptedly in his office by the discernment of Queen Caroline, who fully appreciated his talents, — and by a well-timed offer, to obtain from parliament a jointure for her Majesty of 100,000*l.* a year, — whereas 60,000*l.* was the highest sum which had been proposed by Compton.*

Walpole afterwards owned to the Chancellor his obligations to the Queen, and that with all her influence he had great difficulties to encounter: — "*Nov. 24th.* At this time Sir Robert took occasion to tell me of the great credit he had with the King, and that it was principally by the means of the Queen, who was the most able woman to govern in the world: however, he wished now he had left off when the King came to the throne, for he looked upon himself to be in the worst situation of any man in England: that he was now struck at by a great number of people. All those who had hopes on the King's coming to the throne, seeing themselves disappointed, looked upon him as

* Cox's "Walpole," ii. 519.

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the cause. All the discontented Whigs, and Carteret, Roxburgh, Berkeley, Bolingbroke, the Speaker Compton, and Pulteney, were entered into a formal confederacy against him; and if he could once retire, he never would meddle by way of opposition, but would comply with the Government in every thing."

Lord King's intercourse with Walpole.

The Lord Chancellor stood well with Walpole, who consulted him confidentially on all legal and constitutional questions which arose. I observe by the Journal that Sir Robert as seldom as possible called meetings of the whole cabinet — and he never had what we should call "cabinet dinners," — but his favourite mode of preparing business was to invite two or three more particularly connected with the department to which the subject belonged, or whose opinion he particularly regarded, to dine with him,— and after the most unrestrained conversation with them, he settled what was fit to be done. Thus he would invite the two Tory law Lords, Lord Harcourt and Lord Trevor, to meet the Chancellor, that he might consider with them respecting the reforms of the Court of Chancery. *

I do not think that the Chancellor ever was consulted by Sir Robert out of his own immediate department, or that he had any influence in the general measures of the government. Indeed, the same thing might be said of Sir Robert's other colleagues during the whole course of his administration. If Lord King, like Lord Townshend, had made a struggle to share power with the premier, he very speedily would have been obliged, like Lord Townshend, to retire.

June 27. 1727. Lord King in the House of Lords.

When parliament first met for the despatch of business in the new reign, the Chancellor was relieved from the task of reading the royal speech, George II. having learned to speak English, although with a strong foreign accent †, and the Lord Chancellor had no other duty to perform than to present the speech to his Majesty in the fashion now adopted,

* "*Aug.* 11*th*. At Sir Robert Walpole's; dined there with Lord Harcourt and Lord Trevor. The end of our dining was to consider what was fit to be done with Lord Macclesfield's 30,000*l.*"

† It is said he never could pronounce P. or G. Hence two of his noted sayings, "I hate all *B*oets and *B*ainters," and "I do love old Brentford; it reminds me so much of *F*armany."

instead of receiving the speech from his Majesty, according to the fashion of the reign of George I. The opposition was still so feeble, that in the House of Lords the Chancellor's place was a sinecure. His name does not once appear in the printed debates, but this does not prove much as they are so defective and scanty.

Feb. 26. 1729. Continuance and enforcement of prohibition to publish debates.

The orders against publishing the proceedings of parliament were imposed by both Houses with greater rigour than ever. Upon a complaint against one Raikes, a printer, at Gloucester, that he had printed speeches purporting to have been delivered in the House of Commons, there was an unanimous resolution "that it is an indignity to, and a breach of the privileges of this House for any person to presume to give in written or printed newspapers any account or minutes of the debates, or other proceedings of this House, or of any committee thereof, and that upon discovery of the authors, printers, or publishers, this House will proceed against the offenders with the utmost severity." The House of Lords enforced their order with equal rigour, and by their superior power of fining and imprisoning for a fixed term, notwithstanding a prorogation, — more effectually,— insomuch that the magazines hardly ventured to give even a touch of their orations under feigned names, as delivered in Athens, Rome, or Lilliput.* Upon consulting other sources of information, however, I think there is reason to believe that Lord Chancellor King spoke very rarely, except in bringing forward the bills for reforming the Masters' offices, and for the improvement of the administration of the law, which I shall notice hereafter. Judging from his Diary, which is almost entirely

* There is nothing in our constitutional history which surprises me so much as the long continuance of this restriction; for, besides that the publication of parliamentary debates is favourable to liberty, it is highly flattering to the vanity of the members, and now pleases them so much, that when the reporters' gallery is shut, all speaking is suspended. I suspect that, originally, when printing was introduced, and parliamentary proceedings excited curiosity, the government was afraid that popular haranguing would be encouraged by the publicity of the debates, and that every successive administration, even after the Revolution, thought they had an interest in making parliamentary proceedings as secret as possible, forgetting that from the circulation of their own speeches they might acquire popularity and strength.—At last the officer of the House of Commons who was to enforce the standing order was committed to prison; and now, in one session, there are more reports than during the first sixty years of the last century.

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filled with the deliberations of the cabinet on pending negotiations, he seems to have taken a lively interest in foreign affairs, but when they came to be publicly discussed, he very prudently remained silent, nor did he speak upon the "Pension Bill," the "Mutiny Bill," or on the "Civil List Bill," almost the only other subjects which seem to have caused much excitement in the House of Lords, while he remained Chancellor. This was a most remarkably tranquil period in the history of parliament. Walpole's Excise scheme excited a storm in the Commons, but it never reached the upper House.

Annihilation of party contests.

Although there must have been still going forward at court a number of intrigues, in which the Chancellor was concerned, his Diary unfortunately takes no notice of these, and, abounding with discussions on continental politics, contains very few personal anecdotes of himself or his contemporaries: — but I will give one other extract from it, which may cause regret that he did not write oftener in the same strain, availing himself of the private communications of the Premier: "*Monday, 2nd September*, 1729, went to town. — The next day saw the Queen at Court; from thence went to Sir R. Walpole's in his chariot, and dined with him and his lady only. He told me, that since the last time I saw him, they had received the draught of articles for a definitive peace concerted between our Plenipotentiaries and the Cardinal and the *garde des sceaux;* that they were so plain and good, that they did not think it worth the while to send for me to come to town to see and agree to them, or to give any farther instruction; that they were as good as we could desire, he was afraid too good — but, however, the Cardinal said that he was sure Spain would come into it; that, for expedition, as soon as they were agreed on in France, they were immediately sent to Spain, and were there by this time. In talking with him about the King's orders, that orders for the fleet and the negotiations with Spain should be all from hence without first sending to Hanover, he told me that Lord Townshend was very much displeased at it; that he in concert with the Queen gained it by a stratagem; that the Queen wrote a letter to the King intimating that some people

Negotiation of treaty with France.

Correspondence between George II. and Queen Caroline.

thought the orders for the fleet were too long coming from Hanover, but that she would not for the world desire the King to send a power to her or to any one — here to give immediate orders; that would be to execute a power which belonged only to him, and should be only executed by him. Whereon he wrote her a letter, that he would trust his throne and kingdom entirely with her, and thereupon ordered, that not only the fleet, but also the Plenipotentiaries at Paris should receive their immediate orders from hence, and not stay for his. — On this occasion he let me into several secrets relating to the King and Queen — that the King constantly wrote to her by every opportunity long letters of two or three sheets, being generally of all his actions — what he did every day, even to minute things, and particularly of his amours, what women he admired * * *; and that the Queen, to continue him in a disposition to do what she desired, returned as long letters, and approved even of his amours; not scrupling to say, that she was but one woman, and an old woman, and that he might love more and younger women. * * *† By which means, and a perfect subserviency to his will, she effected whatsoever she desired, without which it was impossible to keep him within any bounds."

Method by which she gained and preserved her influence over him.

This certainly is a very singular correspondence between husband and wife, and we should not be justified in remarking upon it had they not been the King and Queen of these realms; but it is matter of history, and discloses to us the real influences by which the nation was governed. There must have been an extreme intimacy between Her Majesty and Walpole that she should show him these letters, and we cannot help suspecting that, as a method of perpetuating her favour with His Majesty and consequently his own ministerial stability, he framed the answers — which could scarcely have been spontaneously suggested by her own mind. Indeed it is possible that the whole was the invention of

† Diary, p. 111. I have been obliged to omit some other expressions imputed to her Majesty as too coarse to be copied.

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Walpole, who over his wine might wish to mystify the Chancellor. Queen Caroline is generally, and I believe truly, represented to us as not only chaste and pure in her own conduct, but as a zealous patron of religion and morality.

The Diary which had been kept very irregularly, entirely breaks off in October, 1729. I will try to supply its place by here introducing several letters addressed to Lord King while Chancellor, which will throw light upon his conduct and upon the manners and customs of his age.

April 6. 1726.

On the sudden death of Sir Clement Wearg, there was a keen contest about the filling up of his office. Sir John Willes, afterwards Attorney General, and a distinguished Judge, did not consider it beneath his dignity thus to address the distributor of legal patronage: "The occasion of this is humbly to beg your Lordship's favour that I may succeed the late Solicitor General. I have been King's Counsel above seven years, and none of my seniors as I am informed desire it. During my whole life, in whatever station I have been, I have never omitted any one opportunity of showing my zeal for the present establishment, and your Lordship I believe can bear me witness that I was not wanting in my poor endeavours to promote his Majesty's interest, at a time when it was not only very unfashionable, but very dangerous to do so. My behaviour in this respect will I hope be thought sufficient to balance my other imperfections, of which I am fully sensible." Lord King, however espoused the interest of Mr. Talbot, who was now appointed Solicitor General and afterwards succeeded him as Chancellor.

Letter to the Lord Chancellor from Sir John Willes, asking for the office of Solicitor General, April 11. 1726.

Sept. 21. 1725.

It is curious to observe how Judges who wished to resign on account of age and infirmity were obliged to beg for a pension or retired allowance. Sir Littleton Powys, in a letter to Lord Chancellor King, after describing a severe illness from which he had recently recovered, thus proceeds to state his claims: "I was in arms myself with three servants, at the time of the Revolution, under the then Lord Herbert, who chose me to read the Prince of Orange's Declaration at the head of many hundreds of the best of the county then met at Shrewsbury, which I did with a very loud voice, and I am

Letter to the Lord Chancellor from an old Judge who wished to retire on a pension.

sure with very great heartiness. I was the first circuit after that made Second Justice of Chester, and afterwards by the great favour of my Lord Chancellor Somers I was advanced into the Exchequer. I was afterwards, by the approbation of my Lord Chief Justice Holt, removed into the King's Bench, where I have been twenty-three years — so that I have now sat a Judge in Westminster Hall thirty years and in three reigns, and I have had the protection of the clause 'Quamdiu se bene gesserit,' without any misbehaviour ever imputed to me. I am sure I have been most hearty and zealous for his Majesty's person and government, and the present establishment." [Having described his terrible attacks of the gout, he says:] "I might by the help of the bath and other means try to restore my health, and endeavour to die a Judge, but my success in such restoring meets with a most untoward objection, that I am now fourscore years old wanting but one, and I am therefore thinking it better to resign my place if I may be admitted by the great favour and generosity of his Majesty, after so long and faithful service, to go off with honour, by having a pension, in like manner as my brother Powel had, who was a Judge in Westminster Hall eight years fewer than I have been, and my brother Blencome now hath, who was my junior one year." He continues at great length to urge his petition — hinting that it might be very convenient for some worthy friend of the Lord Chancellor, that there should be a vacancy on the bench.

The Prime Minister does not seem to have encroached by any means improperly on the Lord Chancellor's legal patronage. Thus he good-naturedly solicits him for the most inconsiderable appointment which could be held by a barrister: —

"My Lord,

*June 3. 1725. The prime minister's application to the Lord Chancellor for a commissioner-*

"Mr. Green, the bearer, has desired me to recommend him to your Lordship to be continued a Commissioner of Bankrupts. He is now a Fellow of King's College in Cambridge, was clerk to Sir Edward Northey for ten years, — is well known to Lord Chief Justice Raymond and others from whom you may have his character. Our education at the

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ship of bankrupts.

same place and college, entitles him to my good wishes, and is the occasion and excuse for my giving you this trouble.

"I am very truly,
"My Lord,
"Your Lordship's most
"Faithful humble Servant,
"R. WALPOLE."

In the disposal of livings, however, I suspect that for election purposes Sir Robert interfered pretty freely—without very scrupulously considering the merits of candidates. Here is a specimen:—

"My Lord,

Sept. 8. 1738. The Prime Minister's application to the Lord Chancellor for a living in the Church to secure a borough election.

"I am afraid you will think me a hackney solicitor about Church preferments, but my friends will make me the canal to your Lordship's favour, which must plead my excuse. I have just received an account that the vicarage of Lestwithiel, in Cornwall, is vacant. My son being now chosen for that borough, makes my troubling your Lordship more excusable, and begging that you will not be engaged for this vacancy till I receive my instructions in whose behalf I shall be obliged to receive your Lordship's favour.

"I am very truly,
"Your Lordship's
"Most faithful humble Servant,
"R. WALPOLE."

I will give another application to Lord King for a living—from the head of my clan in favour of a poor countryman.

"My Lord,

Dec. 15. 1729. Similar application by the Duke of Argyll for a poor Scotchman.

"This letter will be delivered to your Lordship by the young man I had the honour to recommend to you. He has been hitherto instructing the good people of England *for nothing* in the primitive style, but now giving into the modern taste of prophesying for money and having at present nothing, will be glad to have any preferment, from the prelacy of Canterbury, to the least living in your gift. If

your Lordship will be so good as to enable him to tread in the paths of his brethren, you will do a great favour to CHAP. CXXVI.

"Your most faithful and
"Most obedient humble Servant,
"ARGYLL and GREENWICH."

The next letter shows that in those days the Lord Chancellor, both in England and Ireland, was enabled to conciliate the goodwill of persons of the highest eminence in church and state by a lavish distribution of stationery at the public expense. Thus writes the Most Reverend Father in God, JOHN LORD ARCHBISHOP OF DUBLIN, &c. &c. &c., to Lord King:—

"My Lord,

"Ever since I have had the honour of being acquainted with Lord Chancellors, I have lived in England and Ireland upon Chancery paper, pens, and wax. I am not willing to lose an old advantageous custom. If your Lordship hath any to spare me by my servant, you will oblige

Your very humble Servant,
JOHN DUBLIN."*

April 10. 1733. The Lord Chancellor's supply of paper, pens, and wax to the dignitaries of the Church.

I shall add one letter more, showing that the King thought the surest way to attach the citizens of London to his dynasty, was by giving them a good dinner. The treaty of Vienna being made public, whereby Austria and Spain had engaged to place the Pretender on the throne of Great Britain, a loyal address was voted by the Lord Mayor, Aldermen, and Common Council to his Majesty,— and the Secretary of State sent the following mandate to the Lord Chancellor:—

Dinner at St. James's for the Lord Mayor and citizens of London when presenting an address.

"My Lord,

"The King having ordered a dinner to be provided at St. James's for the citizens who shall accompany the address which is to be presented to-morrow, and it being proper that

Jan. 30. 1726-27.

* Very different from the economy of modern times!—when the Attorney General, deprived of his salary on which he still pays the land tax, is obliged gratuitously to draw public acts of parliament with his own pens and ink on his own paper, being deprived of his stationery and of the pecuniary compensation for some time substituted for it.

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His Majesty's servants should dine with them, which they cannot conveniently do in case the House of Lords should sit, I must beg your Lordship will be so good as to get the House adjourned till Wednesday next. I am with the greatest truth and respect,

"My Lord,

"Your Lordship's

"Most obedient humble Servant,

"TOWNSHEND."

Lord King reforms abuses in Court of Chancery.

I have now only to consider Lord King as a juridical reformer. He found the Court of Chancery in the most deplorable state of confusion. The old usage for the Lord Chancellor on taking possession of his office, like the Roman Prætor, to revise the procedure by issuing a new set of Orders (or an Edict), had been long laid aside, and abuses for the profit of the practitioners, the officers, and the Chancellor, had been greatly multiplied and aggravated. The most crying grievance was the loss which many suitors had sustained by the insolvency of the Masters in Chancery, who, to indemnify themselves for the large sums paid for their places, had been speculating in the South Sea Bubble with the trust-money in their hands. Lord King, upon his appointment, framed various regulations to enforce those lately issued by the Lords Commissioners of the Great Seal for the purpose of compelling the Masters to do justice to the injured suitors.* At his desire, the Lords of the Regency directed that Mr. Paxton, the Solicitor to the Treasury, should prepare an account of the deficiency of the Masters to be laid before the Council, and the Attorney and Solicitor General were required to take care that the suitors might receive satisfaction for their several demands. There were four offices found deficient to the amount of 82,301*l.* 19*s.* 11½*d.*, the whole of which would have been lost—to the utter ruin of many families—the loss falling particularly on widows and orphans, — if a legislative remedy were not found. In the first place,

* Saunders's Orders, i. 506—537.

Lord Macclesfield's fine of 30,000*l.* was most righteously applied to this purpose, and the remainder was made up by an expedient too often resorted to in Chancery reform — by mulcting future innocent suitors*: a tax was imposed for thirty-two years on writs and other proceedings; and on the credit of this the requisite sum was borrowed, so that the suitors who had been robbed were all fully indemnified. To check the like abuses in time to come, Lord King, with the concurrence of the Master of the Rolls, remodelled Lord Macclesfield's order, forbidding Masters in Chancery any longer to make any use of suitors' money for their own advantage, and commanding them forthwith to pay all sums received by them into the Bank of England.†

Establishment of the office of Accountant General.

This for the future secured the principal of the money, but would not have done justice to the suitors, whose fortunes might be locked up many years in the course of administration or pending a complicated litigation. A plan was therefore devised, whereby interest should be allowed to them in the meantime, the money being vested in public securities in the name of a new officer, acting under the control of the Lord Chancellor, to be called the ACCOUNTANT GENERAL. This was carried into effect by two acts of parliament, the one entitled, "An Act for better securing the Monies and Effects of the Suitors of the Court of Chancery‡;" and the other, "An Act for the Relief of the High Court of Chancery."§ "Happy had it been," says Oldmixon, "if the acts had farther relieved the suitors in that Court, by regulating the litigious, tedious, and expensive suits, and the enormous extortions of hungry solicitors, and the vexatious and chargeable attendances upon Masters, which render even a Court of Equity in too many instances equally ruinous and terrible."‖ But the difficulties in the way of further improvement were probably then insurmountable. A contemporary writer says, "If an order is but made to cut off a burthensome expense, to shorten the old lengths for the benefit of suitors,

* Thus, in 1843, on the abolition of the Six Clerks office, the Commons indemnities were directed to be paid by heavy fees.

† Sand. Orders, i. 514. ‡ 12 Geo. 1. c. 32. § 12 Geo. 1. c. 33.

‖ Vol. III. 784.

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Lord King's apology for not doing more for legal reform.

a defalcation never so small runs to the very quick in Chancery Lane. Malice goes to work, clamours, outcries, and oppositions arise, and in the end may grow worse than one man perhaps could tell how to deal with."* We must recollect that not only the Lord Chancellor himself, but that all the officers in the Court down to the door-keepers, were chiefly paid by fees; that the Chancellor of the Exchequer and the public would not have tolerated a proposal to pay them by fixed salaries out of the public revenue; and that the fund arising from unclaimed sums of money, now found so very convenient for Chancery improvements, was then in embryo. When we censure those who have gone before us for inefficiency in law reform, we should recollect that we ourselves have never solved the problem of recompensing professional labour without the test of the length of law proceedings, and that till this is done all attempts to check prolixity will be vain.† Under the auspices of Lord King returns were obtained of all fees and emoluments of officers in Courts of Justice, and these were referred to a commission that their legality and reasonableness might be thoroughly scrutinised in order to their being regulated and reformed. But the report of the Commissioners was not presented till after his death.‡ It should be mentioned to Lord King's credit that he made several attempts to improve the practice of the Court respecting applications to rectify the minutes of decrees; respecting appeals from the Master of the Rolls, and respecting petitions for rehearings§; — but he had little success in this department, and the complaints of the delays and expence of Chancery proceedings were as loud as at any former period.

* History of Chancery, &c. 1726, 12mo.

† A striking illustration of the brevity which lawyers could attain, there being no interest to be verbose, is the judgment of death upon a felon, which, as there was no fee according to the number of words contained in it, was thus recorded — "SUS. PER COL."

‡ In 1730 an act was passed to terminate certain disputes respecting the orders and decrees of the Master of the Rolls — confirming them subject to an appeal to the Lord Chancellor. — 3 Geo. 2. c. 30.; Com. Journ. xxi. 563. It was not thought necessary to introduce any bill to forbid the sale of masterships in Chancery, this being considered adjudged in Lord Macclesfield's case to be illegal, though constantly practised.

§ Sand. Orders, i. 506. 511. 521.

Improvement of written pleadings being in English instead of Latin.

There was one great improvement in law proceedings which, while he held the Great Seal, he at last accomplished. From very ancient times the written pleadings, both in criminal and civil suits, were, or rather professed to be, in the Latin tongue, and while the jargon employed would have been very perplexing to a Roman of the Augustan age, it was wholly unintelligible to the persons whose life, property, and fame were at stake. This absurdity had been corrected in the time of the Commonwealth, but, along with many others so corrected, had been re-introduced at the Restoration, and had prevailed during five succeeding reigns.* The attention of the public was now attracted to it by a petition from the magistracy of the North Riding of the county of York, representing the evils of the old law language being retained in legal process and proceedings, and praying for the substitution of the native tongue. The bill, by the Chancellor's direction, was introduced in the House of Commons, and it passed there without much difficulty. In the Lords it was fully explained and ably supported by the Lord Chancellor, but it experienced considerable opposition, several noble lords being greatly alarmed at such an innovation, and contending that, "if it were sanctioned, our records would be neglected, and the true knowledge of the law would be lost; that much uncertainty and confusion would be produced by attempting to translate the well-established Latin forms into English; that great delays would arise in the administration of justice; that a wide door would be opened to fraud; that prosecutions for crimes would be rendered more difficult and expensive; that the recovery of small debts would become almost impossible, and that the supposed reform would multiply law suits instead of bringing ease to the people." Lord Raymond, the Chief Justice of the King's Bench, speaking, I presume, the sentiments of all his brother Judges, strongly opposed the measure—availing himself of the weapons of ridicule as well as of reason, and saying, "that if the bill passed, the law might likewise be translated into Welch, since many in Wales understood not English." The Duke

Jan. 12. 1730.

Opposition to the measure.

* See an instance of it, ante, p. 599., where the question arose whether the word "impressit" could properly be used to mean *he printed*.

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of Argyle, after a general defence of the bill, said he was glad that nothing could be brought forward against it by the Chief Justice of the King's Bench, as wise and learned a Lord as ever sat in that House — beyond a joke. — Amidst heavy forebodings of future mischief the bill passed, and mankind are now astonished that so obvious a reform should have been so long deferred.*

Lord King's declining health.

Lord Chancellor King's career, most honourable if not very brilliant, was now drawing to a close. His fall was not by a revolution in the state, by the death of a Sovereign, or by a ministerial crisis. With health and fitness for his office, he might have continued to hold it for many years. But, after a long and arduous struggle, he thought it would be decent and becoming that he should voluntarily resign. He had materially injured his constitution by the intense application to which he began to submit for the purpose of qualifying himself as an Equity Judge, soon after he received the Great Seal; and his supervening illnesses were aggravated by the anxiety and mortification to which he was exposed from perceiving that he did not enjoy the confidence of the bar, as he had done when he was a Common-law Judge. As early as November, 1727, he enters in his Journal his refusal to a pressing request from the Duke of Newcastle to come to town, from Ockham, to attend a cabinet: "To this I returned answer, that my constant and continued application to the business of the Court of Chancery had brought upon me rheumatical and sciatical pains;

* 4 Geo. 2. c. 26.; and see 6 Geo. 2. c. 14., allowing technical expressions, such as *nisi prius*, *quare impedit*, &c., still to be used. Blackstone laments the loss of the old law Latin (vol. iii. Com. 322.); and I have heard the late Lord Ellenborough from the bench regret the change, on the ground that it has had the tendency to make attorneys illiterate. Serjeant Heywood, the vindicator of Fox, seriously acted upon Lord Raymond's jest. As I have been told by the counsel who were present, while he was sitting as Chief Justice of the Caermarthen Circuit on a trial for murder, it appeared that neither the prisoner nor the jury understood one word of English, and it was proposed that the evidence and the charge should be translated into Welch; but his Lordship said that "this would be repealing the act of parliament, which requires that all proceedings in courts of justice shall be in the English tongue, and that the case of a trial in Wales, the prisoner and the jury not understanding English, was a case not provided for, although it had been pointed out by that great Judge, Lord Raymond." The jury very properly brought in a verdict of *not guilty*,—the evidence, to those who understood it, being decisive to prove that the prisoner had murdered his wife.

and if I had any regard to myself or family, I must, for remedy, stay three or four days in the country." He had a very able and experienced Master of the Rolls, but Sir Joseph (piqued, probably, that a common lawyer should have been put over his head), instead of cordially assisting him, kept aloof as much as he could, and sometimes actually thwarted him in the framing of orders respecting the practice of the Court.* He made extraordinary exertions to clear off arrears, often sitting in Court to a late hour; but even for these exertions he was censured. The author of a pamphlet, then published, "Upon the Abuses of the Court of Chancery," bitterly exclaimed, "It was not lawful for the PRÆTOR URBANUS to hear causes after sunset; but ours we see post on till *midnight*, to master and put down the business of his Court." † This complaint of late sittings appears very sulky and capricious, but I am afraid it might be excused by what was to be spied in the Court of Chancery in the latter days of Lord Chancellor King. The celebrated Jeremy Bentham, then a young barrister, in a letter to Cooksey, the author of the "Lives of Lord Somers and Lord Hardwicke," has given, from his own observation, a very lively picture of the manner in which Equity business was then disposed of: "Lord King became so far advanced in years when he held the Seals as Chancellor, that he often dozed over his causes when upon the bench; a circumstance which I myself well remember was the case; but it was no prejudice to the suitors; for Sir Philip Yorke and Mr. Talbot were both men of such good principles and strict integrity, and had always so good an understanding with one another, that, although they were frequently, and almost always, concerned for opposite parties in the same cause, yet the merits of the cause were no sooner fully stated to the Court, but they were sensible on which side the right lay; and, accordingly, the one or the other of these two great men took occasion to state

Jeremy Bentham's account of the Court of Chancery in the last days of Lord King.

* Diary, p. 19. "His secretary delivered me a letter from him, whereby he declares that he will prevent as much as he can the usher submitting to any such bills."

† History of Chancery, &c., 1726, 12mo.

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the matter briefly to his Lordship, and instruct the Register in what manner to minute the heads of the decree.*

Lord King struck by paralysis.

He resigns the Great Seal.

At last, when Lord King had been Chancellor eight years, — from the exertions he made beyond his strength, he was struck by a paralytic affection, which happily left him conscious of the propriety of his retirement. He yielded to the necessity with decency and firmness, and intimated, first to the minister, and then to his Majesty, his determination to resign. Not being in a state of health to surrender the Great Seal with his own hand at St. James's, — at his request George II. on the 19th of November, 1733, sent the Secretary of State to his house to receive it, bearing warm acknowledgments of his long and faithful services.

Lord King in retirement.

Having delivered up the bauble with little regret, the Ex-chancellor felt that he was now completely disabled for public life, and that the time that might be spared to him was to be devoted to contemplation. He immediately hastened to his favourite retreat at Ockham, and having a mind early tinctured with literature and devotion, he was not sorry to exchange the distractions of business for the resumption of his theological studies and the settlement of that great account which he was about to render of his thoughts and of his actions in this mortal state. He seemed to rally from repose and the pure air of the country, but on the 22d of July in the following summer, about noon, he had a fresh and much more severe attack of his disorder, and, at eight o'clock in the evening of the same day, he expired, in the sixty-sixth year of his age.

His death.

His burial.

His body was interred in the parish church at Ockham, where there was erected a most splendid and tasteful monument to his memory by Roubiliac—with these words engraved on an urn: —

* Cooksey's "Somers," p. 60. When business is divided in a Court between two great leaders without competitors, justice may thus be substantially administered, although not always to the satisfaction of the losing party, who expects his counsel to make the best fight he can in return for his fee. The late Chief Justice Gibbs told me that when he led the Western Circuit against Serjeant Lens, they kept a weak Judge right. "Thus," said he, "I once, knowing I had no case, opened a nonsuit before my brother Graham. He was for deciding in my favour; but I insisted on being nonsuited, and saved my client the expence of having a verdict in his favour set aside."

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"DEPOSITUM
PETRI DOMINI KING,
BARONIS DE OCKHAM."

And the following inscription on a tablet underneath:

His epitaph.

"He was born in the City of Exeter, of worthy and substantial parents,
but with a genius superior to his birth.
By his industry, prudence, learning, and virtue,
he raised himself to the highest character and reputation,
and to the highest posts and dignities.
He applied himself to his studies in the Middle Temple,
And to an exact and complete knowledge in all parts and history of the Law,
added the most extensive learning, Theological and Civil.
He was chosen a Member of the House of Commons in the year 1699;
Recorder of the City of London in the year 1708;
Made Chief Justice of the Common Pleas in 1714, on the accession of King George I.;
Created LORD KING, BARON OF OCKHAM,
and raised to the post and dignity of Lord High Chancellor of Great Britain, 1725;
under the laborious fatigues of which weighty place,
sinking into a paralytic disease, he resigned it Nov^r. 19. 1733,
And died July 22. 1734, aged 65,
A Friend to true Religion and Liberty."

His character.

This panegyric is modest and well deserved. The voice of posterity re-echoes "A friend to true religion and liberty!" He was not celebrated for his eloquence; he has not enriched our literature with any very attractive compositions; and he did not, in his highest elevation, equal the expectation that had been formed of him; but he was a most learned, enlightened, and upright magistrate, ever devoted to the conscientious discharge of the duties of his station. He rose from obscurity to high distinction by native energy and self-reliance, — without courting the favour of any patron or of the multitude — and without ever incurring the suspicion of a dishonourable or mean action. If he did not dazzle by brilliant qualities, he gained universal good will by such as were estimable and amiable. He himself unostentatiously ascribed all his success in life to his love of labour, and he took for his motto, "Labor ipse voluptas,"—upon which I find in the Biographia Britannica, the following paraphrase by one of his admirers:

"'Tis not the splendour of the place,
The gilded coach, the purse, the mace,
Nor all the pompous strains of state,
With crowds that at your levee wait,
That make you happy, make you great:
But whilst mankind you strive to bless
With all the talents you possess,

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"Whilst the chief joy that you receive,
Arises from the joy you give.
Duty and taste in you unite
To make the heavy burden light;
For pleasure, rightly understood,
Is only labour to be good." *

I have not been able to discover much of him in private society, but he seems, notwithstanding his addiction to divinity and law, to have had no inconsiderable share of humour, and he must have been a most determined punster if we may judge from the following epitaph, which he wrote when Chancellor, upon an old carpenter of the name of Spong, and which is still to be read on a square granite grave-stone covering this "plane" man's remains in Ockham church-yard:

Lines by him on an old carpenter.

"Who many a sturdy oak had laid along,
Fell'd by DEATH's surer hatchet, here lies SPONG.
*Posts* oft he made, yet ne'er a *place* could get,
And liv'd by *railing*, tho' he was no wit.
Old *saws* he had, although no antiquarian,
And *styles* corrected, yet was no grammarian.
Long liv'd he Ockham's premier architect;
And lasting as his fame a tomb t'erect.
In vain we seek an artist such as he,
Whose pales and gates were for eternity.
So here he rests from all life's toils and follies,
O spare awhile, kind Heaven, his fellow-labourer, Hollis." †

His descendants.

Lord King, as I have before stated, was married early in life, and he continued to live with the object of his affections to the day of his death in perfect harmony and happiness. By her he left four sons, three of whom successively inherited his honourable title and ample estate. Though all well-behaved, none of them appear to have in any way gained much renown. The eldest, for dabbling in poetry, is grouped in the DUNCIAD with other dull sons of distinguished sires:

* When Lord King was about to be raised to the peerage, a gentleman of the name of Whatley sent him a long dissertation on "MOTTOES," warning him against a punning or "canting" one, as "A Rege pro Rege," and submitting three for his choice: "Est Modus in Rebus," "Discite Justitiam," and "Vincit Ratio." This is preserved among the "Somers' Tracts," edited by Sir Walter Scott.

† Hollis was bricklayer to the family, as Spong had been carpenter.—*Gent. Mag.* vol. lxx. p. 113.

"Great C**, H**, P**, R**, K**,
Why all your toils? your sons have learned to sing;
How quick ambition hastes to ridicule!
The sire is made a peer, the son a fool."

But in another generation the talent of the founder of the family again broke out with fresh lustre. The late Lord King, so eminent for wit, eloquence, and every great and amiable quality, was the grandson of the youngest of the four brothers. The Chancellor is now represented in the direct male line by the Earl of Lovelace, whom I rejoice to see deservedly raised in the peerage, but whom, from my regard for the memory of old Sir Peter, I should have been still better pleased to have hailed as "EARL KING."*

* Grandeur of the Law, p. 114.

# CHAPTER CXXVII.

## LIFE OF LORD CHANCELLOR TALBOT FROM HIS BIRTH TILL HE RECEIVED THE GREAT SEAL.

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New era under the House of Hanover.

WE have now bid a final adieu to the stirring times of William III. and of Anne, in which the six last preceding Chancellors played a distinguished part. Those who are to follow did not enter public life till the House of Hanover was securely on the throne; and, without being engaged in revolutionary intrigues, they rose to high office merely by professional eminence. The Georgian period of English history, to which we are to be confined, was comparatively tranquil; but it presents us with great men at the head of the law, who would have been capable of guiding the destinies of the nation under any circumstances, however arduous. The first of these was praised in a more vehement and less qualified manner than almost any one who ever held the office of Lord Chancellor. Historians and poets were equally eager to celebrate his good qualities. But this arose in part from the sympathy excited by his fate, for he was only shown as a Judge to excite the admiration of mankind, when he was snatched away to an early tomb.

Talbot's family.

CHARLES TALBOT sprang from a very ancient and illustrious family, which has produced a great number of distinguished warriors and statesmen,—having for his ancestor the companion of Henry V., who, after the death of that monarch, so heroically sustained the interest and glory of the English name in France. He was of a younger branch of the Talbots — settled first at Grafton, and then at Salwarp, in Worcestershire.* His father, a younger brother, went into the church, and displaying learning and liberality of sentiment, was successively Dean of Worcester and Bishop of Oxford, of Salisbury, and of Durham. The Earl of Shrewsbury, the

His father.

* This branch was descended from Sir Gilbert Talbot, third son of John second Earl of Shrewsbury.

early friend of Lord Somers,—head of the house at the close of the seventeenth and beginning of the eighteenth century,—who took a leading part in two revolutions,—in bringing in King William, and bringing in King George,—no doubt assisted the merits of his kinsman in procuring these promotions. Bishop Talbot was, as might be supposed, a zealous Whig. From him was inherited the eloquence in debate which distinguished his son. He seems to have had considerable weight in the House of Lords. Burnet particularly celebrates his speech in favour of the Union with Scotland, and his speech against Dr. Sacheverell.* On this last occasion he boldly denied that the Church condemned resistance in cases of extreme tyranny, and he relied upon the instance of the Jews who, under the brave family of the Maccabees, revolted against Antiochus, and formed themselves into a free and independent government. "Our homilies," he said, "only condemn wilful rebellion against our Kings *while they are governing by law.*" These sentiments he instilled into the minds of his descendants, who, steadily defending the just prerogatives of the Crown established for the good of the people, were zealous friends of civil and religious liberty.

His birth.

The Bishop, by his wife Catherine, daughter of Alderman King, of London, had eight sons. Of these, the eldest, the subject of this memoir, was born in the year 1684, while his father was only a country parson. I have not discovered any thing respecting his school education, and there seems reason to think that he continued under private tuition till he was sent to the university. The diligent habits, and taste for polite literature, which afterwards distinguished him, he must have contracted at an early age. In Michaelmas Term, 1701, he was entered a gentleman commoner, at Oriel College, Oxford, where his father likewise had been educated. Learning had then fallen to a low ebb in this once famous university,—Jacobite politics being the chief business of the place,—and hard drinking its chief recreation:

At Oxford.

> "Now Isis' elders reel, their pupils sport,
> And Alma Mater lies dissolv'd in port."

* Vol. iv. 176. 286.

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Luckily for young Talbot, he was generally regarded with a sort of horror as the son of a Whig Bishop, who had opposed the "Bill against Occasional Conformity," and he was excluded from the coteries, where measures were debated to put down Dissenters along with Low Church divines, if possible, more odious,—and to atone for the national sin of the Revolution (in which the church had for a short time been implicated), by re-establishing the doctrine of divine right, and by recalling the true heir to the throne. Our banished student consoled himself with the Orations of Cicero and Demosthenes, and he surreptitiously got possession of a copy of the works of John Locke, which, carefully concealing from his tutor, he pored over late at night, in his bed-chamber, where he thought he was in no danger of a visit from the proctors. Now, likewise, he most usefully devoted much of his time to the study of the Roman Civil Law,—which was probably the secret of his afterwards turning out so skilful a jurist, and such an admirable Judge. Being impatient to breathe in a freer atmosphere, he claimed, under the statutes of the university, an honorary degree as the son of a Bishop, before the ordinary time for his graduating had arrived; and it was found that notwithstanding the loose opinions which he was supposed to have inherited from his father, this could not be refused to him, for he had been remarkably regular in his attendance at chapel and at lectures, and no breach of academical discipline could be imputed to him. He proceeded B. A. in Trinity Term, 1704. Forthwith he left the university — with the highest reputation for his accomplishments; and his manners were so agreeable, that in the following year, although known to be a Whig, and what might be equally alarming, known to be more than "*mediocriter doctus*," he was elected a Fellow of All Souls. *

Fellow of All Souls.

He spent two or three years very agreeably, having his college for his head quarters,— not yet determined on a profession, and with a strong inclination for the easy life he might expect to enjoy in the church. But he grew more and more

* By the statutes of this college, those to be elected Fellows are required to be "bene nati, bene vestiti, et mediocriter docti;" but, in modern times, the fellows have often been distinguished for their learning, as well as their social qualities.

sick of the monotony of Oxford, and falling into the company of Lord Chancellor Cowper, that discerning man soon discovered his extraordinary talents and fitness for public life, and advised him to study the law. Accordingly on the "28th of June, 1707, Charles Talbott, Esq., son and heir apparent of William Lord Bishop of Oxford, was admitted of the Honourable Society of the Inner Temple *," and he took up his residence in chambers.

He is entered of the Inner Temple.

I have not been able to obtain any authentic account of him while he remained *in statu pupillari* there. He must have been exposed to the disadvantage of a comfortable home at the west end of the town, while his father was attending parliament, and to the danger of easy access to fashionable society — more formidable to a law student than penury and friendlessness. But, on the other hand, he had a powerful stimulus to exertion and perseverance in recollecting that his father had such a numerous family, and that a finished education was all the patrimony he had to expect. †

He is called to the bar.

From extraordinary proficiency in his studies, or from family interest, the period of his studentship was abridged. According to the rules then subsisting in the Inns of Court, he could not be called to the bar till he was of seven years standing, and had kept sixteen terms, but on the 11th of February, 1711, he had "a call of grace." ‡

* Admission Book, 1693—1707.

† Instead of inheriting large possessions from his father, he is said afterwards to have contributed generously to pay his father's debts; who, in princely magnificence, spent more than his princely revenue at Durham.

‡ "[1] Interius Templum
Ricus Webb, Armiger.
Thesaurarius ibm.
} Parliamentu tentm undecimo die Februarij Anno Dom. 1710.

"At this Parliament, Mr Charles Talbott is called to the Bar, and to be utter Barrister of this Society."

The following entries likewise appear in the books of the Inner Temple respecting Lord Chancellor Talbot.

"Interius Templum
Nathan[1] Manlove, Ar.
Thesaurar. ibm.
} Parliament. tentum Sexto die Maij Anno Dom. 1726.

"At this Parliament, Charles Talbot, Esqr, his Majesties Soll General, is called to the Bench."

[1] "Bench table, 5 Feb. 1710.-11. — "Ordered that notice be given to the Masters of the Bench, that a call to the Barr will be proposed at the Table on Friday next. And it is also ordered that Mr. Charles Talbot, eldest son of the Bishop of Oxford, be put into the paper in order for such call."

During the reign of Queen Anne he seems to have abstained from politics, and to have devoted himself entirely to his profession. His success was rapid and steady. He went the Oxford circuit, where he got into good practice, but he chiefly flourished in the Court of Chancery. He was one of the first who, early in their professional career, confined themselves to the sittings of the Lord Chancellor, which, since the abolition of the Star Chamber, were held, during the seasons of business, every morning, and in the afternoons of Wednesdays and Fridays,—and to the sittings of the Master of the Rolls, held in the afternoons of Mondays, Tuesdays, and Thursdays. But he had laid a solid foundation of common law, and continued to go the circuit till he was appointed Solicitor General to the King. An equity draughtsman's office was not thought a sufficient school for Chancellors till a century afterwards.

Returned to parliament.

On the accession of George I., his father succeeded the famous Gilbert Burnet as Bishop of Salisbury, and at the general election, which soon followed, he was himself returned to the House of Commons as member for Tregony. His name is hardly ever mentioned in the printed debates, but it is quite certain that he spoke frequently and well; and such a position had he established for himself, although a lawyer, that he was selected to second the nomination of Spencer Compton as Speaker. The seconder seems to have made the best speech on that occasion. Although the mover

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|---|---|
| "Interius Templum<br>Nath[1] Manlove Arm.<br>Thesaurarius ibm. | Parliamentum tentum<br>decimo nono die<br>Novembris Anno<br>Dom. 1726. |

"At this Parliament, it is ordered that Charles Talbot, Esq[r], his Majesty's Sollicitor General, one of the Masters of the Bench of this Society, be and is hereby unanimously elected Treasurer for the year ensuing."

| | |
|---|---|
| "Intius Templum<br>Carolus Talbot, Ar.<br>Soll Genal Dni R[s].<br>Thesaurarius ibm. | Parliamentum tentum<br>undecimo die<br>Februarij Anno Dom<br>1726. |

"At this Parliament, Charles Talbot, Esq[r]., his Majesties Sollicitor General, Trearer of this Society, is chosen Reader for the next Lent Vacation (in the roome of Richard West, Esq[r], late Lord Chancellor of Ireland, and one of the Masters of the Bench of this Society, decd)."

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Oct. 9. 1722. He seconds motion for election of Speaker.

was the celebrated Philip Earl of Chesterfield, then Lord Stanhope, he seems to have said little more than, "considering the present circumstances of the times, and the many important affairs that seemed urgent to come before the House, the House ought, in this first step, to give his Majesty and the whole nation convincing proofs of their firm adherence to our present happy establishment, by choosing for their Speaker a person of unshaken fidelity to his Majesty, and of undoubted zeal for the Protestant succession." But, according to the slight sketch we have of Talbot's oration, after congratulating the House on the numerous attendance, which he hailed as an earnest of public spirit in the new parliament, he said, "he hoped every gentleman came there resolved to support the liberty of the subject, the just rights of the Crown, and our present happy establishment in church and state: that it would be impossible to give a more striking proof of these laudable feelings than by placing in the chair the honourable person named, who had been ever distinguished for his love of freedom and his unalterable adherence to a government framed for the good of the people. If there be any enemies to our peace who have entertained imaginary hopes that the people of this kingdom are inclined to exchange Protestant for Popish rule, let us show, by the known character of the person we place at our head, what is to be expected from this House of Commons." He then goes on to give the form, which has been followed ever since on such occasions;—to enumerate all the qualifications of a perfect Speaker; and to assert that they are all concentrated in the individual whom it is proposed to call to the chair.*

Solicitor General to the Prince of Wales.

In 1717 a feather was put into Talbot's cap by appointing him Solicitor General to the Prince of Wales; but he had been eleven years in parliament before he had any valuable professional advancement. Lord Chancellor Macclesfield entertained a prejudice against him, or, at any rate, sacrificed him to the indulgence of his excessive partiality for a favourite—certainly a very deserving one—Philip Yorke,

* 8 Parl. Hist. 22.

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who was made Solicitor General while almost a boy. Talbot having resented this promotion, incurred the decided displeasure of the Lord Chancellor, and was passed over on the next move in the law, which took place on the elevation of Sir Robert Raymond to be Lord Chief Justice of the King's Bench.

Solicitor General to the King, April 23. 1726.

At last, after the fall of Lord Macclesfield, Lord King, the new Chancellor, expressed himself sensible of the injustice hitherto done to Mr. Talbot, who had continued to enjoy high distinction both in his profession and in parliament; and on the sudden death of Sir Clement Wearg, although a strong effort was made in favour of Sir John Willes, Mr. Talbot was appointed to succeed him as Solicitor General to the King. He escaped knighthood, and continued Charles Talbot, Esquire, till made Lord Chancellor and a Peer. He had some time before been returned member of parliament for the city of Durham, where his father was now Prince-Bishop. On his promotion he vacated his seat under the recent act of parliament, but he was re-elected without opposition.*

* Talbot remaining a member of the Inner Temple, had for the convenience of occupying chambers in Lincoln's Inn been admitted of that Society, and was now made a bencher and treasurer. The following entries respecting him appear in our books:

"London ff. Carolus Talbot de Interiori Templo London Armiger admissus est in Societatem hujus Hospicij tricesimo primo die Januarij anno regni Dni nri Georgij Dei Gra Magne Britanie Franc et Hibnie Regis quinto. Annoq. Dni 1718. Et solvit ad usum Hospicij prd. £iij iijs. iiijd."

"At a Council held the 10th day of December, 1722.

"Upon the nomination in writing of Sr John Williams and Sr Edward Gould, Knt, touching a certain chamber situate in Serles Court, Lincolnes Inne, &c. to Charles Talbot, of Lincolnes Inne, aforesaid, Esqre. It is ordered that the said Mr Talbot be admitted to ye said Chamber, he first paying the fine of ten pounds to ye Treasurer of This Society, and the usual ffees to the Officers of ye House, and all arrears due on ye said chamber."

"At a Council held the 27th day of April, 1726.

"Ordered that Charles Talbott, Esqre, his Majesty's Sollr Generall, be invited to the Bench of this Society; and that Mr Willes, and Mr Hungerford, do waite upon him and acquaint him therewith."

"At a Council held the 11th day of May, 1726.

"Upon the report of Mr Willes and Mr Hungerford, two of the Masters of the Bench of this Society, who were by Order of Councill of ye 27th of April last desired to attend Mr Sollicitor Generall with an Invitation to the Bench, 'That they had attended the said Mr Sollr Generall, who accepted of the said Invitation.'—Ordered, that ye said Mr Sollicitor Generall be called to the Bench

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Notwithstanding former jealousies, a perfect friendship was now established between him and his colleague, and seldom has the Crown of England had such law officers,— Sir Philip Yorke being Attorney General, while Talbot was Solicitor. They continued to serve together cordially, zealously, and honourably, for above six years. Sir Robert Walpole was sensible of their great value, and on the death of George I., as soon as he found that his own power was to continue, took care that their patents should be renewed.

April 22. 1726. His co-operation with Sir P. Yorke the Attorney General.

The members of the government, for a long while, had easy work in the House of Commons, for, as yet, there was no organised opposition, and a session would go off with a tame discussion on Spanish intrigues, or a complaint about publishing proceedings in parliament.

Sir R. Walpole's Excise scheme.

Sir Robert, at last, brought forward his famous Excise Scheme *, and although the measure is now allowed to have been highly favourable to free trade, and well calculated to improve the revenue, and to lessen the weight of taxation, such was the clamour against it, that it had nearly caused a change of administration. During this crisis, the minister was nobly supported by the Solicitor General, who was not a mere equity practitioner, but an enlightened statesman, capable of understanding and discussing any question on which the safety or prosperity of the country might depend. In answer to the minister's most masterly statement of his plan, Sir John Barnard, Pulteney, and Sir William Wyndham having attacked, and misrepresented it, Talbot gallantly rose, and having first shown that instead of being a "General Excise," it was merely an alteration of the mode of levying the tax on tobacco and wine, to facilitate commerce

Talbot's speech in support of it.

of this Society, and that he be published at the next Exercise in the Hall, first paying all his arrears of duties to this Society."

"At a Council held the 27th day of July, 1726.

"Ordered, that Charles Talbot, Esqre, his Majesties Sollicitor Generall, be Treasurer of this Society for the remaining part of this yeare, in the place of John Browne, Esqre, who hath lately resigned his place of Treasurer."

"At a Council there held the 28th day of Novr, 1726.

"Ordered, that Mr Sollicitor Generall be Master of the Library for the year ensuing."

* In this instance, he violated and proved the wisdom of his maxim, "quieta non movens."

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in these commodities, by requiring the tax to be paid when they were to be used, instead of when they were imported; he proved that, by the operation of the bill, infinite frauds would be prevented, the fair dealer would be protected, prices would be reduced, consumption would be doubled, and the revenue would be proportionably improved, so that the land tax might be entirely remitted. He further argued, that by the extension of the same system, all the ports in Great Britain might be made free ports, and our trade and our wealth might be infinitely increased.—The legal profession shone much in this debate, for the measure was likewise ably defended by the Attorney General, and by Sir Joseph Jekyll, the Master of the Rolls. It was carried through the first stage by 266 to 205; but this majority dwindled away on subsequent divisions, and the opposition to it was so tremendous out of doors, that it was abandoned,—to the great joy and loss of the nation.* The session was as soon as possible closed by a prorogation, and Talbot never again appeared in the House of Commons. Before parliament reassembled, there were very important changes, by which he was removed to another scene of action.

April, 1733.

Disposal of law offices on death of Lord Raymond; and resignation of Lord Chancellor King.

In the Life of Lord King, I have related how, in his declining days, Talbot and Yorke, who led against each other in the Court of Chancery, amicably settled between them the decrees and orders to be pronounced by the Chancellor, but that in November, 1733, this mode of disposing of the business came to an end. It so happened that a little time before Lord King's resignation, Lord Raymond, the Chief Justice of the King's Bench, suddenly died, and no successor to him being yet appointed, the highest equity Judgeship, and the highest common law Judgeship, were vacant at the same time. "Although Sir Philip Yorke, then Attorney General, was considered as such to be entitled to the Seals in preference to Mr. Talbot, yet the latter, having confined himself very early to the practice of the Court of Chancery, and not having been much conversant with the practice of the Common Law, he

Jeremy Bentham's statement as to the reason for making Talbot Chancellor.

* 8 Parl. Hist. 1268—1328.; 9 Parl. Hist. 1—48.; Coxe's Walp. i. 404.

thought himself not sufficiently qualified to preside in the Court of King's Bench, on which account Sir Philip Yorke, being equally competent to preside either in that Court or the Court of Chancery, it was agreed between them that Sir Philip should waive his pretensions in favour of Mr. Talbot; and the King and the ministry so well approved of it, that it was settled among them that Sir Philip Yorke should have the place of Chief Justice of the King's Bench, and should have 2000*l.* a year added to his salary as Chief Justice, which, however, Sir Philip, to his honour, refused to accept, without its being made permanent to the office of Chief Justice of that Court, by being secured to his successors; and upon these terms the Seals were delivered to Mr. Talbot. In consequence of which Sir Philip was created Lord Hardwicke, and Mr. Talbot Lord Talbot." *

**Conjecture as to the true reason.**

I have thought it right to state this transaction in the very words of Bentham, the philosopher of Queen's Square, who, then practising in the Court of Chancery, had good means of information, and whose sincerity may be depended upon. But I cannot help suspecting that there were other reasons for conferring the higher office upon Talbot besides his supposed want of qualification for the lower. Although for the last eight years he had confined his practice to the Courts of Equity, he had been familiarly acquainted with the Common Law by private study and by going circuits, and he must have been as well prepared to be a Chief Justice as Lord Eldon was, who presided with full as much applause in the Court of Common Pleas as in the Court of Chancery. Nor can the true solution be, that Yorke, having the first choice, preferred, as others have done, the certainty of tenure to splendour of present enjoyment, for he afterwards willingly resigned for the Great Seal the office which he now accepted. Some have supposed that the arrangement was the result of political intrigue, and that the descendant of the Earls of Shrewsbury by family connection triumphed over the son of the country attorney. But this is a merely gratuitous conjecture, and is at variance with Talbot's open and upright character and the cordial intimacy that now subsisted between

* Jeremy Bentham's Letter to Cooksey. — *Cooksey*, 61.

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these rivals for honourable distinction. The probability is, that Walpole, much as he no doubt valued Sir Philip Yorke, thought that Talbot would be a still more desirable associate in the Cabinet, and would be still more useful to him presiding on the woolsack than in a court of law. In such arrangements political convenience has ever had more weight than nice considerations of judicial fitness. From a very long official career Lord Hardwicke has left a far greater reputation as a judge and as a statesman than Lord Talbot, who was so suddenly cut off when beginning to gather his fame; but while they were running the race of glory together, the latter seems to have excited most applause, and if his life had been prolonged, a statue would have been erected to him in the new palace at Westminster, by the side of Lord Somers and Lord Mansfield. The circumstance of their relative rank as law officers of the Crown when the vacancies occurred, would be of small importance, for although it has always been considered that the Attorney General may claim as of right any Common Law Judgeship which is vacant, the disposal of the Great Seal in earlier times was the personal act of the Sovereign, and more recently was left to the Prime Minister, who was not guided by any fixed rotation, but considered what would most conduce to the credit and strength of his government. Upon this occasion the Attorney General could not consider himself aggrieved with the Chiefship of the King's Bench, a Peerage, and a large addition to his salary, and the two continued cordially to co-operate in the public service without any envious or jealous feeling arising to disturb their friendship.

Talbot receives the Great Seal, and is made a Peer.

The Great Seal having been received from Lord King, it was delivered to Mr. Talbot as Lord Chancellor, by his Majesty, George II., at a council held on the 29th of November, 1733. At the same time he was sworn a Privy Councillor, and on the 5th of the following month he was raised to the Peerage by the title of Lord Talbot, Baron Talbot of Hensol, in the county of Glamorgan.

## CHAPTER CXXVIII.

### CONCLUSION OF THE LIFE OF LORD TALBOT.

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Satisfaction of the public on his appointment.

An illustration was now given of the excellence of the English practice of selecting for the Bench men of the highest eminence at the bar, who have distinguished themselves as law officers of the Crown,—instead of following the French system of keeping the order of advocates and judges distinct. If men are appointed Attorney and Solicitor General from family interest, or from considerations of party convenience, without looking forward to their fitness for their judicial destiny, their promotion is a heavy misfortune to the public; but it is only from the long experience in the administration of justice obtained as an advocate that the public could have the advantage of such consummate Judges as Hardwicke and Talbot. Their appointment gave universal satisfaction, and as the latter was the more popular, great delight was expressed that he was placed at the head of his profession, and that the wrong formerly done to him was completely redressed.

A few days after receiving the Great Seal, the new Chancellor sat for the despatch of business in Lincoln's Inn Hall, but he was not formally installed in his office till the 23d of January following, the first day of Hilary Term,—when, after a most splendid procession to Westminster Hall, he was placed in the marble chair in the Court of Chancery with all the ancient solemnities.*

* "Anno 7timo Georgii 2di Regis. 29 Nov. 1733. Memorandum, that on Thursday, the 29th of November, 1733, at the request of Peter Lord King, Lord High Chancellor of Great Britain, his Majesty sent to his Lordship for the Great Seal; and about three in the afternoon of the same day, his Majesty was graciously pleased to deliver the same to Charles Talbot, Esq., with the title of Lord Chancellor, and his Lordship was sworn in council at the same time; and though he sat at Lincoln's Inn Hall the 4th day of December following, yet his Lordship was not sworn by the clerk of the Crown till the 23d of January, being at Westminster Hall the first day of the then next Hilary Term, when his Lordship took the oaths appointed to be taken by the 1st of William and Mary, and the oath of Lord Chancellor, the Master of the Rolls holding the book, and the clerk of the Crown giving the oaths."—Roll, 1727—1760.

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A.D. 1734.

Grand "Revel" in the Inner Temple in honour of Lord Talbot.

A grand "Revel" was given in honour of the new Chancellor by the Inner Temple,—being the last great festivity at an Inn of Court till the visit of Queen Victoria to Lincoln's Inn, more than a century after,—when her royal Consort vouchsafed to become a member of that Society, and was called to the degree of an utter barrister.

It would require the pen of a Dugdale to do justice to such scenes, but the following not ungraphic account of the "Talbot pageant" has been transmitted to us:—"On the 2d of February 1733-4, the Lord Chancellor came into the Inner Temple Hall about two of the clock, preceded by the Master of the Revels, Mr. Wollaston, and followed by the Master of the Temple, Dr. Sherlock, Bishop of Bangor, and by the Judges and Serjeants who had been members of that House. There was a very elegant dinner provided for them and the Lord Chancellor's officers; but the barristers and students of the house had no other dinner provided for them than what is usual on GRAND DAYS; but each mess had a flask of claret besides the common allowance of port and sack. Fourteen students waited at the bench table, among whom was Mr. Talbot, the Chancellor's eldest son, and by their means any sort of provision was easily obtained from the upper table by those at the rest. A large gallery was built over the screen, and was filled with ladies who came for the most part a considerable time before the dinner began: and the music was played in the little gallery at the upper end of the Hall, and played all dinner time. As soon as dinner was ended the play began, which was—"*Love for Love*," with the farce of "*The Devil to Pay*." The actors who performed in them all came from the Haymarket in chairs, ready dressed, and (as it was said) refused any gratuity for their trouble, looking upon the honour of distinguishing themselves on this occasion as sufficient. After the play, the Lord Chancellor, Master of the Temple, Judges and Benchers entered into their parliament chamber, and in about half an hour after came into the Hall again, and a large ring was formed round the fire-place (but no fire or embers were on it). Then the Master of the Revels who went first, took the Lord Chancellor by the right hand, and he by

Ceremony of the Lord Chancellor, and the Judges "dancing round the coal fire."

his left took Mr. Justice Page, who, joined to the other Judges, Sergeants and Benchers present, danced, or rather walked 'round about the coal fire,' according to old ceremony, three times, during which they were aided in the figure of the dance by Mr. George Cook the prothonotary, then sixty; and all the time of the dance the ancient song, accompanied with music, was sung by one Toby Aston, dressed in a bar gown, whose father had been formerly Master of the Plea Office in the King's Bench. When this was over, the ladies came down from the gallery, went into the parliament-chamber, and stayed about a quarter of an hour, while the Hall was being put in order. Then they went into the Hall, and danced a few minuets. Country dances began at ten, and at twelve a very fine collation was provided for the whole company, from which they returned to dancing, which they continued as long as they pleased, and the whole day's entertainment was generally thought to be very genteelly and liberally conducted. The Prince of Wales honoured the performance with his company part of the time; he came into the music *incog.* about the middle of the play, and went away as soon as the farce of 'walking round the coal fire' was over."*

* "Wynne's Eunomus. Notes." A newspaper of the day says, "The ancient ceremony of the Judges 'dancing round the coal fire' was performed with great decency."

As these festivities in the Inns of Court are not only closely connected with the history of the Law, but possess permanent interest as illustrating the manners of the age, I will here insert, from the records of our Society, an account (never before published) of the visit with which our predecessors were honoured by Charles II.

King Charles II.'s visit to Lincoln's Inn, in the year 1671.

"A Narrative of the Kings Majesties reception and Enterteynment att Lincolnes Inne the nyne and Twentieth day of Ffebruary, One thousand six hundred seaventy one.

"Sir Francis Gooderick, Kn[t], one of his Ma[ties] learned Councell att Law, and Sollicitor Generall to his Royall Highnesse the Duke of Yorke, being Reader of this Society of Lincolnes Inne for the Lent Reading, in the yeare One thousand Six hundred seaventy one, having invited the King, his Royall Highnesse, and Prince Rupert, and diverse of the Nobilitie, to dine in Lincolnes Inne Hall on such day of his reading as his Ma[tie] should make choice off, His Ma[tie] was pleased to appoint Thursday, the nyne and twentieth of Ffebruary, one thousand six hundred Seaventy one. And accordingly that day his Ma[tie], together with his said Royall Highnesse, and his Highnesse Prince Rupert, being also attended by the Duke of Monmouth, the Duke of Richmond, the Earles of Manchester, Bath, and Anglesey, the Lord Viscount Halifax, Lord Bishop of Ely, Lord Newport, Lord Henry Howard, and diverse others of great Qualitie, came to Lincolnes Inne. His Ma[tie] made his entrance through the

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Lord Talbot's great merit as an Equity Judge.

As an Equity Judge Lord Talbot exceeded all the high expectations which had been formed of him. In my long

Garden att the great Gate opening into Chancery Lane next Holborne, where Mr Reader and the rest of the Benchers and Associates waited his coming, and attended his Matie up to the Tarras walke next the ffields, and soe through the Garden, the Trumpetts and Kettle Drums from the Leads over the highest Bay window in the middle of the Garden Building, sounding all the while. And from the Garden his Matie went to the New Councell Chamber, the Barristers and Students in their Gownes standing in a Rowe on each side betweene the Garden and the Councell Chamber. After a little rest, his Matie viewed the Chappell, returning agayne to the Councell Chamber, from thence, as soone as his Table (being placed upon the assent at the upper end of the Hall and railed in) was furnished, his Majestie was brought into the Hall where his Matie sate under his Canopy of State, being served by the Reader as Sewer upon his Knee with the Towell before he did eate, his Royall highnesse sitting at the end of the Table on his right hand, and Prince Rupert att the other end. The Dukes and Lords and other his Maties attendants of Qualitie, after some short tyme of waiting, had leave from his Matie to sitt downe to Dinnar att Tables prepared for them on each side of the Hall. The Reader and some of the Benchers, to witt, Sir Thomas Beverley, Master of Requests to his Matie, Sir Robert Atkins, Knt of the Bath, all the tyme of his Maties dineing waiteing neere his Maties Chair, and some other of the Benchers with white staffes waited as Controlers of the Hall to keepe good order, and above ffifty of the Barristers and Students, the most part of them attending as waiters and carrieing up his Maies meate, which was served upon the Knee. The rest of the Barristers and Students waiting upon the Lords att their table. The three cources, wherein were exceeding great plenty and variety of Dishes, and after them a most liberall Banquett, was served up by the said Barristers and Students, and delivered by them upon their Knees att the King's Table, The Musick consisting of His Maties Violins, playing all the tyme of Dinnar in the Gallery att the lower end of the Hall. Towards the end of Dinnar his Matie, to doe transcendant honor and grace to this Society, and to expresse his most gratious acceptance of their humble duty and affection towards him, was pleased to demand the Book of Admittances to be brought to him, and with his owne hand entered his Royal name therein most gratiously condiscending to make himself a Member thereof, which high and extraordinary favor was instantly acknowledged by all the Members of this Society then attending on his Majestie with all possible Joy, and received with the greatest and most humble expressions of Gratitude, itt being an Example not presidented by any former King of this Realme. His Royall highness and Prince Rupert followed this great and highest Example, as also the Dukes and other Lords, who, before his Maies rising from dinnar, borrowed Gownes of the students and put them on, and in those Gownes waited on his Matie, with which his Matie was much delighted. And his Matie, through his owne most obliging favor vouchsafed to it (having made himselfe more neerely and intimately concerned for the good of this Society), was pleased himselfe to begin a health to the welfare thereof, and to cause itt to be pledg'd in his owne presence, and immediately gave the Reader leave to drink his Maties health, and to begin to his Royal Highnesse. Then riseing from dinnar, he was agayne attended to the new Councell Chamber, where he conferred the honour of Knighthood on Mr Nicholas Pedley and Mr Richard Stote, two of the Benchers, who had in their turns been Readers of this house, as also upon Mr James Buttler, one of the Barristers, and Mr Ffrancis Dayrell, one of the Students, That soe every degree and order of the Society might have a signall Testimony of his Maties high favour. His Majestie upon his departure made large expressions of his most gratious acceptance of the Enterteynment, and returned his thanks to the Reader, and was pleased to signifie the great respect and esteem he should ever have for the Society.

journey from the reign of Ethelred to that of George IV., I find this Chancellor alone without an accuser, without an



"The Gentlemen of the Horse Guards, Yeomen of the Guard, and other inferior attendants, were bountifully enterteyned att the costs and charges also of the Reader. The Gentlemen of the Horse Guards dined in the old Councell Chamber, the Yeomen of the Guards in M[r] Day's Chamber, And the Coachmen and Lacqys in the Gardiner's house, to all their contentment.

"On Saturday following M[r] Reader, Sir Robert Attkins, Sir Nicholas Pedley, and Sir Richard Stote, Benchers and Readers of Lincolnes Inne, waited on his Ma[tie] att Whitehall, being conducted to his Ma[ties] presence by the Earle of Bath, and gave most humble thanks for that high and transcendant honour he had been pleased to vouchsafe to this Society, which was graciously received by his Ma[tie], And did the said Benchers the honour to Kisse his hand."

Queen Victoria's visit to Lincoln's Inn, in the year 1845.

The official record of Queen Victoria's visit on the occasion of the opening of the New Hall,—after describing an audience with which the Treasurer and two other Benchers were honoured to invite Her Majesty and her Royal Consort, Her Majesty's gracious intimation that they would be present at a "déjeûner" on the 30th of October, and the preparations made to receive them,—thus proceeds:

"The Queen's Counsel wore their silk gowns, and the long full-bottomed wig. Lord Cottenham, Lord Campbell, and the Speaker, wore their black velvet court dresses: the three Vice-chancellors their full dress, Judges' wigs, and Lord Bexley his blue and gold official dress, as a former minister of the Crown.

"At the top of the Hall a table was placed upon the dais for the Queen, his Royal Highness Prince Albert, and the other guests who accompanied the Queen; the benchers and the preacher of the Inn; and then, transversely, four tables reaching to the bottom of the Hall were devoted to the bar and such of the students as attended. Each plate was numbered; and the barristers were placed according to their seniority.

"The tables were all handsomely and substantially decorated and furnished; the entertainment being a cold one. The band of the Coldstream Guards attended, and played during the time Her Majesty was in the Hall.

"At the top of the Hall, from time to time, appeared not only the benchers, but the Cabinet Ministers, who were invited. Lord Campbell was one of the first to make his appearance; the Duke of Wellington was dressed as a Field Marshal, but entirely undecorated; Lord Lincoln followed in the costume of a Cabinet Minister. All the benchers being assembled, and the hour of arrival drawing nigh, the procession for receiving Her Majesty, headed by the Treasurer, made its way down the Hall, and placed itself at the south-east entrance of the Hall, and shortly afterwards the Queen, with Prince Albert, attended by four of the ladies in waiting, and certain high officers of her household, arrived. The party came in five private carriages, attended by a body of the Life Guards; and soon in the Hall the National Anthem was heard. In a few moments after, Mr. Doyle, the steward, announced "The Queen." Her Majesty immediately entered, passing up the middle of the Hall, leaning on Prince Albert's arm, and preceded by the Treasurer walking backwards, and amidst loud and hearty cheering. Her Majesty walked to the library, followed by her ladies, the Cabinet Ministers, Officers of State, and the Benchers, who came two and two, according to the date of their election to the bench.

"The Queen wore a blue drawn silk bonnet with a blue feather, a dress of Limerick lace, and a scarlet shawl with a broad gold edging.

"In the Library, the Queen, seated on a chair of state, held a levee, and received an address from the benchers, the barristers represented by the four seniors, and the students or fellows, two of whom were also present. The address was read by the Treasurer to the Queen, on his knee, and was as follows:

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enemy, without a detractor, without any one from malice or mistake to cavil at any part of his character, conduct, or

"'Most Gracious Sovereign,

"'We your faithful subjects, the Treasurer and Masters of the Bench, the Barristers and Fellows of the Society of Lincoln's Inn, intreat your Majesty's permission, humbly to testify the joy and gratitude inspired by your august presence. The edifice in which, under such happy auspices we are for the first time assembled, is adorned with memorials of many servants of the Crown, eminent in their talents, their learning, and their integrity. To the services as recorded in history of these our distinguished predecessors, we appeal in all humility for our justification in aspiring to receive your Majesty beneath this roof.

"'Two centuries have nearly passed away since the Inns of Court were so honoured by the presence of the reigning prince. We cannot, therefore, but feel deeply grateful for a mark so conspicuous of your Majesty's condescension, and of your gracious regard for the profession of the law.

"'It is our earnest desire to deserve this proof of your Majesty's favour, by a zealous execution of the trust reposed in us, to guard and maintain the dignity of the bar of England.

"'In our endeavours to this end, we shall but follow in the course which it has been your Majesty's royal pleasure to pursue. Signally has your Majesty fostered the independence of the bar and the purity of the bench, by distributing the honours which you have graciously bestowed on the profession among the members of all parties in the State.

"'Permit me, also, most gracious Sovereign, to offer your Majesty our sincere congratulations on the great amendments of the law which have been effected since your Majesty's accession to the throne throughout many portions of your vast empire.

"'The pure glory of these labours will be dear to your Majesty's royal heart; for it arises from the welfare of your subjects.

"'That your Majesty may long reign over a loyal, prosperous, and contented people, is our devout and fervent prayer to Almighty God.'"

"The following reply, which Her Majesty received from Sir James Graham, was then read:

"'I receive, with cordial satisfaction, this dutiful address. My beloved Consort and I have accepted with pleasure your invitation, for I recognise the services rendered to the Crown at various periods of our history by distinguished members of this society; and I gladly testify my respect for the profession of the law by which I am aided in administering justice, and in maintaining the prerogative of the Crown and the rights of my people.

"'I congratulate you on the completion of this noble edifice; it is worthy of the memory of your predecessors, and the station which you occupy in connection with the bar of England.

"'I sincerely hope that learning may long flourish, and that virtue and talent may rise to eminence within these walls.'"

"A chair was placed for the Prince on the left of Her Majesty; he did not occupy it, but remained standing.

"The above address, and its answer, having been read, the Treasurer was knighted; and his Royal Highness Prince Albert was invited to become a member of the Inn, to which he at once agreed, and the admission book being handed to Her Majesty and Prince Albert, they were graciously pleased to sign their names therein, as also did the following persons — The Lord Chancellor, the Duke of Wellington, the Marquis of Exeter, the Earl of Aberdeen, Lord Liverpool, the Earl of De La Warr, the Earl of Jersey, the Earl of Hardwicke, the Earl of Lincoln, Lord George Lennox, Sir James Graham, the Honourable Colonel Grey, the Honourable Captain Alexander N. Hood, Colonel Bouverie, and Captain Francis Seymour.

"The ceremony being over in the Library, Her Majesty, accompanied by the above party, then proceeded to the Hall. Grace being said by the chaplain, the

demeanour. While in no respect deficient in judicial gravity and dignity, the flowing courtesy of his manners seems to

assembly received the permission of the Queen to be seated, Her Majesty, occupying a chair of state with a canopy, partook of the refreshment provided, appearing pleased and well contented.

"On the right of the Queen sat Prince Albert,—next to his Royal Highness the Lord Chancellor, then came the Duke of Wellington, and then the Earl of Aberdeen, and then Lord Cottenham.

"On the left of Her Majesty sat the treasurer Sir Francis Simpkinson, and then one of the ladies in waiting, next the Earl of Hardwicke, Lord Campbell, and others. At the end of the banquet, which lasted about half an hour, grace was again said; and then the treasurer, having received permission from Her Majesty to propose a toast, proposed 'the health of Her Majesty the Queen, who had that day honoured them with her Royal presence.' This was responded to with plaudits. After some minutes the cheering having subsided, the treasurer stated that his Royal Highness had that day become a member of the Inn, and begged, with the permission of Her Majesty, to propose the health of their new member 'His Royal Highness Prince Albert.' This also was received with loud cheering, and was rendered even more interesting by the manner in which the Queen joined in it. Holding a glass of port wine in her hand, she stood up all the time, and drank it off to the bottom. His Royal Highness, in a peculiarly distinct voice, returned thanks, and said he had received her Majesty's commands to propose 'Prosperity to the Honourable Society of Lincoln's Inn,' which was drunk. Soon after the Queen, accompanied by the ministers and benchers, withdrew, amidst loud cheering. Her Majesty and her party retired into the council room; from whence, after her carriage had been summoned, she came again into the Hall, and, accompanied by the treasurer and benchers, she proceeded amidst loud cheering into her carriage, and departed.

"It is further to be noticed that Prince Albert, on withdrawing after the feast, put on a student's gown over his Field Marshal's uniform, and so wore it on returning from the Hall."

Afterwards, as appears by the following entries, his Royal Highness Prince Albert was in due form called to the Bar, and was elected a Bencher.

"Lincoln's Inn.

"At a Council, held the 3d day of November, 1845.

"Ordered, That his Royal Highness the Prince Albert, having been graciously pleased to become a member of this Society, be invited to the bench; and that Sir J. A. Francis Simpkinson, the treasurer, the Right Honourable the Vice-chancellor of England, and William Selwyn, Esq., three of the masters of the bench, be deputed to invite his Royal Highness accordingly."

"At a Special Council, held the 20th day of November, 1845.

"Upon the motion of the treasurer, seconded by the Right Honourable the Vice-chancellor of England,

"Resolved unanimously,

"That his Royal Highness Prince Albert be called to the bar, and be forthwith and hereby published a barrister of this Honourable Society; the keeping of all his terms and exercises, and the payment of all fees and expences being dispensed with.

Prince Albert called to the bar and elected a Bencher of Lincoln's Inn.

"Resolved,

"That in the event of his Royal Highness accepting the invitation to the bench, the payment of all fees and expenses of every kind be dispensed with.

"At a Council, held the 12th day of January, 1846.

"Upon the report of Sir J. A. Francis Simpkinson, the Right Honourable the Vice-chancellor of England, and William Selwyn, Esq., that in pursuance of the order of council of the first day of Michaelmas Term, 1845, deputing them to wait upon his Royal Highness the Prince Albert with an invitation to

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have won all hearts. Well acquainted with the most abstruse branches of the law of real property, he had himself heard delivered in court all the important judgments of Lord Harcourt, Lord Cowper, Lord Macclesfield, Lord King, and Sir Joseph Jekyll, and he knew familiarly the most minute details of practice, which are only to be learned thoroughly by experience, and to which there was then hardly any printed guide. In addition to these qualifications, he was energetic and indefatigable in business—punctual in his hours of sitting,—till he had subdued his arrears, eager to avoid, instead of to make, a holiday, and to postpone instead of hastening the adjournment of the Court. He was under the influence of no leader at the bar, and he on no occasion showed peculiar favour to any counsel unless to those who required encouragement from their modesty and timidity. He never even incurred a suspicion of corruption in the disposal of office or of undue influence in his decrees.*

Some of his decisions are to be found in Peere Williams, but his chief reporter is Forrester, a barrister who practised before him, and has left us an octavo volume, entitled, "Cases Tempore Talbot." This gentleman, with an adequate share of professional knowledge and accuracy, possessed little skill in composition, so that he gives us a very faint notion of the lucid reasoning and felicity of illustration universally ascribed to the Judge whose fame he ought to have perpetuated.

the bench of this Society, they have waited upon his Royal Highness accordingly, and they report that his Royal Highness has been pleased to accept the invitation. It is ordered, that his Royal Highness the Prince Albert be called to the bench, and that he be published at the next exercise in the Hall."

On the grand day of the following Trinity Term, his Royal Highness dined in the Hall as a Bencher — when he most gracefully entered the dining hall, after Henry Tancred, Esq., M.P. for Banbury, the Treasurer. Such intercourse tends to strengthen the throne, and to perpetuate the liberties of the people!

* It is related of him, that he much valued a maxim taken for the motto to a law book published by Judge Jenkins. "The common law has been from the beginning of the world, for it is common reason;" and that "he quoted and avowed this maxim from the bench whenever any thing repugnant to it was offered from the bar." But I think he was too sensible a man to set up for law his own notion of what was reasonable or unreasonable, expedient or inexpedient. It was well said by Mr. Justice Burrough, "Public policy is an unruly horse, which, if a Judge unwarily mounts, ten to one he is run away with."

I can do little more than show how Lord Chancellor Talbot disposed of a few of the principal questions which came before him. He first decided that the Court will assist a testamentary guardian to prevent an improper marriage of an infant heir. The son of the late Lord Raymond, Chief Justice of the King's Bench, while a boy of seventeen, was about to marry a Miss Chetwynd. Thereupon, his guardians under his father's will filed a bill in the Court of Chancery, and presented a petition, stating that it would be a great disadvantage to the minor to marry at this time, and that it had been necessary to keep him in close custody to prevent his marrying, and praying that the Lord Chancellor would give such directions as he should think fit for the benefit of the minor. *Lord Chancellor.*—"I am glad that this application has been made. The Court will prevent the marriage if it has the power to do so. It is admitted that the young lady is of a good family, and it is not shown what fortune the young Peer has, so that I cannot tell whether this be a Smithfield bargain or not; but his age is improper for marriage; that is the consideration which weighs most with me, and upon which I think myself bound to interfere. In order to strengthen the hands of the guardians, I order them to retain the Lord Raymond in their care and custody, and that they do not permit him to marry without the consent of the Court. But it has been said that it would be very cruel and unnatural in a father not to suffer his daughter to marry to her advantage, and she would have reason to blame him for it ever after. Now, to prevent that charge upon Mr. Chetwynd, I order him not to suffer his daughter to marry the Lord Raymond without the consent of the Court —which prevents any imputation or charge upon Mr. Chetwynd from the lady, or any body else; since, if there be any fault in it, it will fall upon the Court, and I shall be very willing to bear it."*

His decisions.

Jurisdiction of the Lord Chancellor over the marriage of minors.

In *Cray* v. *Rooke*, he had to determine whether a bond which a testator had given to his mistress should be set aside,

Bond for provision of a mistress.

* The Lord Raymond's case.—Cas. Temp. Talbot, 58.

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and if not, in what order, and from what fund it should be satisfied. After great deliberation, he held that, as it had not been obtained by fraud, it should not be set aside in favour of the legitimate children or heir; that it should not be paid out of the personal estate until after simple contract debts; but that it should be paid out of the real estate if the personal estate should fall short.*

Liability of widower for debts of deceased wife.

The question arose in *Heard* v. *Stanford*, "whether, if a man marries a woman of large personal property which comes to him by the marriage,—after her death he is liable for the debts due from her before marriage?" It was strongly urged that, as he would be liable for them during her life, her fortune in his hands should be considered equitable assets for the benefit of her creditors. *Lord Chancellor.*—"The question is whether the husband, as such, be chargeable for a debt of his wife after her death in a Court of Equity? As, on the one hand, the husband is liable to all his wife's debts during the coverture, though he did not get one shilling portion with her; so, on the other hand, it is as certain that if the debt be not recovered during the coverture, the husband is no longer chargeable as such, let the fortune he received with his wife be ever so great. The case, perhaps, may be hard, but the law has made it so, — that it may be equal on both sides, as well where the husband is sued during the coverture for a debt of his wife's with whom he had no fortune, as when by her death he is discharged from all her debts, notwithstanding any fortune he may have received in marriage with her. So is the law; and the alteration, if desirable, is the proper work of the legislature only."†

A public minister resident in England does not forfeit his privilege by engaging in trade; but a consul is

In Barbuit's case it was debated "whether a foreign minister resident in England, by engaging in commerce, forfeits his privilege not to be arrested, and whether a foreign consul is privileged as a minister." Barbuit, commissioned by the King of Prussia "to do what his Prussian Majesty should think fit to order with regard to his subjects trading in Great Britain," exercised the trade of a tallow-chandler in London,

* Cas. Temp. Talbot, 155.

† *Heard* v. *Stanford*, Cas. Temp. Talbot, 173.

and, being imprisoned under an order made in a Chancery suit, he claimed, as an ambassador, to be discharged. *Lord Chancellor.*—"Though this is a very unfavourable case, yet if the defendant is truly a public minister, I think he may insist on his privilege after allowing the suit to go on ten years against him without objection; for the privilege of a public minister is to have his person sacred and free from arrests, not on his own account, but on the account of those he represents; and this arises from the necessity of the thing, that nations may have intercourse with one another in the same manner as private persons, by agents, when they cannot meet themselves. And if the foundation of this privilege is for the sake of the Prince by whom an ambassador is sent, and for the sake of the business he is to do, it is impossible that he can renounce the privilege introduced not for his own benefit. He may deserve to be thrown into prison, but we must protect the state which he represents. The exception in the statute of Anne of persons trading, relates only to the servants of ambassadors, for the parliament never imagined that the ambassadors themselves would trade. The question is, whether the defendant be a public minister? If he had been accredited to negotiate a commercial treaty, he would have been so. It is of no weight with me, that he was not to concern himself about other matters of state. The commission need not be general to entitle him to protection. But this person is not to transact affairs between the two Crowns: the commission is to assist his Prussian Majesty's subjects here in their commerce. Although he is called an agent of commerce, I do not think that the name alters the case. At most he is only a CONSUL, and it is the opinion of Barbeyrac, Wiquefort, and other writers on public law, that a Consul is not entitled by the *Jus Gentium* to the privileges of an ambassador. I therefore cannot discharge him." *

not privileged as a public minister.

In *Duke of Somerset* v. *Cookson*, from a desire to do

* Cases Temp. Talbot, 181. But to please the Prussian government, the Secretary of State satisfied his creditors, and he was discharged.

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complete justice, he a little stretched his authority by holding that a bill in Equity lies to compel the preservation and the delivery to the right owner of a valuable piece of art. The plaintiff, as Lord of the manor of Carbridge in Northumberland, having a grant of "*treasure trove*," was entitled to an antique silver altar dug up there, which had a Greek inscription upon it, and was dedicated to Hercules. The altar had been purchased by the defendant with notice of the claim to it, and he threatened to deface it or melt it down. On a demurrer to a bill filed by the Duke for an injunction and to have the altar delivered up to him, it was objected that the remedy was at law by action of trover or of detinue; that the furthest Equity had yet gone was to allow a suit for the recovery of title deeds which *savour of the realty;* and that if the present plaintiff were to succeed, all actions of trover and detinue would be turned into bills in Chancery. But Lord Talbot held "that this suit was maintainable on the ground that the thing sued for was matter of curiosity and antiquity; that it would be very hard if a person who wrongfully gets possession of such a relique might destroy or retain it, paying the intrinsic value of it, and that the law being defective in this respect, such defect is properly supplied in Equity."*

Effect of Union with Scotland on writs *ne exeat regno.*

One other case of general interest I find to have been decided by him, — *Hunter* v. *Murray*, in which the question arose, "whether since the Union with Scotland, under a writ of *ne exeat regno*, a party might be prevented from going into that part of the United Kingdom." *Lord Chancellor.*— "This, in its origin, was a mandatory writ to prevent the King's subjects from going into foreign parts to practise treason with the King's enemies: but since, it has been made ancillary to the jurisdiction of this Court, that persons residing within the realm of England may be compelled to do justice to their fellow subjects. How can I alter the terms or

* Peere Williams, 390.

the operation of the writ by reason of the legislative Union with Scotland, which in no respect enlarges or affects the jurisdiction of any Court in England? It is dangerous to alter established forms. I will make no order, but leave parties to proceed in the old beaten path." *

These specimens of Lord Talbot's decisions may not exalt him in our view above the level of modern Vice-chancellors, but by his contemporaries he was regarded almost as a superior being. — His great despatch, and the admirable manner in which he comported himself, caused a prodigious influx of business into his Court, and "Chancery" having for the first time in England become a popular word, it was said that a new era had begun in the administration of Equity. I ought likewise to mention to his credit, that he powerfully assisted the inquiries which were going on respecting the taking of excessive fees from the suitors, and that he had important measures in preparation for correcting judicial abuses. Thus was Lord Talbot successfully labouring as a magistrate, and if his life had been spared I make no doubt that the praise of perfecting our equitable system would have been bestowed upon him still more loudly than it has been upon his successor.†

As a politician we read hardly any thing of Lord Talbot from the time of his appointment as Chancellor. This arises

* *Hunter* v. *Murray*, Cas. Temp. Talb. 196.

† In mentioning the universal satisfaction which Lord Talbot gave as a Judge, perhaps I ought to have excepted old Sarah Duchess of Marlborough; but, as we say in Scotland, "her tongue is no scandal," and her abuse may be considered a necessary addition to the commendation of others — to make out a perfect character. Pope was wrong in saying that her ruling passion was gratified, for it ever remained craving and insatiable:

"From loveless youth to unrespected age,
No passion gratified except her rage."

Lord Talbot, soon after his appointment, pronounced a decree against her; and she scurrilously abused him to all her correspondents. Thus, in a letter to Lord Marchmont, dated June 11. 1734, writing about election petitions to the House of Commons, she says, "there will be one against my Lord Chancellor, who has done most unbecoming and unjustifiable things to make a return for his son against Mr. Mansell for Glamorganshire. This is a step very bad to begin his reign with; but it is certain he is a man of no judgment, whatever knowledge he may have in the law; nor does he know any thing of the world, or the qualities of a gentleman."

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Lord Talbot as a politician.

from the profound tranquillity of the times—the masterly policy of Walpole having warded off foreign war, suppressed Jacobitism, and, for a season, paralysed faction. After the tremendous storm excited by the Excise scheme had subsided, the nation was pleased by the marriage of the King's eldest daughter, the Princess Anne, to the Prince of Orange; the apprehension of plots was allayed by Bolingbroke's retirement into France, and for three years nothing more memorable occurred than hopeless motions for the repeal of the Test Act and of the Septennial Act, the passing of the Gin Act, Porteous's riots in Edinburgh, and the blowing up of a little gunpowder in Westminster Hall to frighten the Judges. Lord Mahon says, "it was to stem in some degree the formidable attacks expected in the Upper House on his dismissal of Chesterfield, Clinton, Burlington, Montrose, Marchmont, and Stair, for their opposition to the Excise scheme, that Walpole determined to send there two of his most eminent commoners, the Attorney and Solicitor General." * But for a long time in that assembly hardly any show of opposition appeared. The circumstance of the Prime Minister continuing a commoner — then quite unexampled — diminished the consequence of the Lords, and they were rapidly falling from the palmy state which they had occupied in the beginning of the century, and which, without more energy, I see little prospect of their ever resuming. Lord Talbot's name is seldom mentioned in their deliberations.

Ceremony of taking his seat in the House of Lords.

He took his seat as a Peer, on the 17th of January, 1734, being the first day of the seventh session of the seventh parliament of Great Britain. The account of this ceremony as recorded in the Journals may be amusing.† "The Lord President acquainted the House that his Majesty had been pleased to create Charles Talbot, Esq., Lord Chancellor of Great Britain, a Peer of this realm. Whereupon his Lordship, taking in his hand the purse with the Great Seal, retired to the lower end of the House;

* Vol. ii. 257. † 9 Parl. Hist. 182.

and having there put on his robes was introduced between the Lord Harrington and the Lord Delawarr (also in their robes), — the Gentleman Usher of the Black Rod, Garter King of Arms, the Lord Great Chamberlain, and the Deputy Earl Marshal of England preceding. His Lordship laid down his patent on the Chair of State kneeling; and from thence took and delivered it to the Clerk who read the same at the table. [The entry, having described the reading of the patent, and the writ, and the taking of the oaths, thus proceeds;] which done, he took his place on the lower end of the Baron's bench; from whence he went to the upper end of the Earl's bench, and sat there as Lord Chancellor, and then returned to the woolsack."*

March 28. 1734. His speech in support of warlike preparations.

Lord Talbot is mentioned this year as having spoken once, and once only. In consequence of the commencement of hostilities on the continent of Europe, between the Spaniards and the House of Austria, a message was brought down from the King recommending that power should be given to augment the forces, and a motion to this effect was made by the Duke of Newcastle. This being opposed by Lord Carteret, Lord Chesterfield, and Lord Bathurst, the Lord Chancellor left the woolsack and spoke as follows: "The present situation of affairs in Europe is so well known to every noble Lord that it does not require to be detailed by me to justify the course proposed by the government. Considering the heavy war actually begun, and the different powers already actually engaged in it, there can be no doubt that it may produce imminent dangers to this nation for which, in prudence, and for the preservation of our own neutrality, we ought to be prepared. By his Majesty's message he asks no powers beyond those already constitutionally vested in him, and the message may be considered only as an application from his Majesty for the advice of his parliament with relation to what may be thought most proper to be done at such a critical juncture. The most dutiful and becoming return we can make, is, in my opinion, the address proposed

* Lord Hardwicke took his seat as a Peer the same day.

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A.D. 1734.

by the noble Duke. If, without any appeal to parliament, ministers had augmented our forces by sea and land, can there be a doubt that parliament would have approved of what was necessary for our defence, and would have provided for the necessary expence thereby occasioned? If the increased force should be unnecessary, and the expence of it thrown away, there is nothing in the address to justify such mismanagement, and the next parliament will be at full liberty to animadvert on his Majesty's advisers as if no such message had been brought down, and no such address had been voted. As between parliament and the government, the power of censure and of punishment remains untouched. I will grant, my Lords, that by the address proposed the ministers may have a little more credit among the people than otherwise they might have had. I will allow that by the address the honour of parliament will be engaged to provide for the expence to be incurred, whether inevitable or unnecessary. But this is the very reason why I support the course proposed for our adoption. Surely, in our dangerous situation from the disturbed state of Europe, we are not to be left defenceless for fear a bad use should be made of the means granted for our defence. Without confidence, neither the affairs of individuals nor of nations can be conducted. There may be a breach of trust; yet trustees must be appointed. Ministers may be guilty of delinquencies, but you must vest in them power to provide for the public safety, and that power must be increased in proportion to the perils which surround you. His Majesty tells us there is nothing he has more at heart than to see the flame of war extinguished before we are involved in it; and to strengthen his hands for this purpose, nothing can be so effectual as to show to the world the perfect harmony which is subsisting between his Majesty and his parliament. This address will prove to Europe that his Majesty has all the resources of this mighty nation completely at his command, and will enable him to arbitrate irresistibly for the general good. This parliament must very speedily be dissolved, as nearly seven years have expired since it was summoned. Let its last act be to de-

clare that as we are free at home, we are determined to be respected abroad. 'Britons never will be slaves.' This sentiment will be repeated by all the constituent body at the coming elections, and will be the rallying cry of the new House of Commons. When his Majesty is thus seen to be warmly supported by a parliament which is to last seven years, we may rest assured that he will be able to restore tranquillity to the Continent on equitable terms, and that at all events he will effectually provide for British interests, and make the British name respected all over the world." The address was carried by a majority of 101 to 58.*

A.D. 1735. Defects of representation of Scotch Peerage.

The business which seems chiefly to have occupied the Upper House in the following session, arose out of a complaint respecting intimidation and undue influence in the election of the sixteen Peers for Scotland. The Lord Chancellor had to speak frequently on the subject, and to write letters by order of the House to the complainants, who were Scotch Peers; but their petition was at last dismissed, the nomination remaining with the government,—and the subject was without permanent interest.† The proper remedy was pointed out by Lord Sunderland's Peerage bill, by giving a certain number of hereditary seats in the House of Lords to the Scotch Peerage.— The only other subject on which the Chancellor is stated to have spoken this session, was the quartering of soldiers at elections, and no intelligible account of his speech is preserved. He maintained that there was no law for taking troops from places where parliamentary elections are going forward; that an express law against their being allowed to be present would destroy a useful discretion in cases of necessity; that the difficulties surrounding the subject would for ever prevent legislation upon it; and that the wise course would be to leave all to the ministers of the crown upon their parliamentary responsibility.‡

Soldiers at elections.

During the session of 1736, the Lord Chancellor is not mentioned as having spoken once, and the only subjects of

* 9 Parl. Hist. 520—559. † 9 Parl. Hist. 720—796.
‡ Ib. 885. 887.

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debate recorded in the Lords were respecting the collection of Quakers' tithes, and the prevention of smuggling.*

A.D. 1737. Speech in the King's name on public disturbances.

On the first day of the session of 1737, the Speaker and the Commons having come to the bar, the Lord Chancellor being seated on a bench on the steps of the throne along with Frederick Prince of Wales, and other Commissioners, spoke as follows: —

"My Lords and Gentlemen,

"We are commanded by his Majesty to let you know that, as it is not convenient for his Majesty to be here this day in his royal person, he has been pleased, by letters patent under the Great Seal, to authorise His Royal Highness the Prince of Wales, and several other Lords, to do every thing in the name of his Majesty which ought to be done on the part of his Majesty in this parliament."

The letters patent being then read, the Lord Chancellor spoke as follows: —

"My Lords and Gentlemen,

"In pursuance of the authority given us by his Majesty's Commission under the Great Seal, amongst other things, to declare the causes of holding this parliament, we are, by his Majesty's command, to state to you that his Majesty has been graciously pleased to direct us to acquaint you that he hath seen, with the greatest satisfaction, the unwearied application of this parliament in framing good laws, for advancing the prosperity, and securing the welfare of his loving subjects; and that it hath been one of his Majesty's principal cares to enforce them by a due execution, with the strictest regard to the rights and properties of the people, no invasion whereof can with any colour be suggested by the most malicious enemies of the present establishment. Whilst this hath been our condition, his Majesty cannot but observe that it must be matter of the utmost surprise and concern to every true lover of his country, to see the many contrivances and attempts carried on in various shapes, and in different parts of the nation, tumultuously to resist and obstruct the execution

* 9 Parl. Hist. 969—1270.

of the laws, and to violate the peace of this kingdom. These disturbers of the public repose, conscious that the interests of his Majesty and his people are the same, and of the good harmony which happily subsists between him and his parliament, have levelled their sedition against both, and in their late outrages have either directly opposed, or at least endeavoured to render ineffectual, some acts of the whole legislature. His Majesty, in his great wisdom, thinks it affords a melancholy prospect to consider to what height these audacious practices may rise, if not timely suppressed, and that it deserves no small attention that they may go on to affect private persons in the quiet enjoyment of their property, as well as the general peace and good order of the whole. His Majesty apprehends it to be unnecessary to enlarge upon a subject of this nature, and therefore hath commanded us barely to mention it to you, who, by the constant tenour of your conduct, have shown that you consider the support of his government as inseparable from the preservation of the public tranquillity and your own safety."

The Porteous riots in Edinburgh.

This speech referred to riots in London in consequence of the act to check the drinking of gin,—to an insurrection in the West against turnpike gates, — to a dispersion of libels in Westminster Hall while the Judges were sitting there by means of an explosion of gunpowder, — and, above all, to the murder of Captain Porteous by a general rising of the citizens of Edinburgh.

Lord Talbot opposes the 'smuggling bill,' as encroaching on the liberty of the subject.

It is a curious fact, that the first measure brought in by the ministers as a cure for these evils was opposed by Lord Chancellor Talbot, as well as by Lord Chief Justice Hardwicke, and several other Peers. This was a bill to prevent smuggling, which contained a clause "subjecting any three persons travelling with arms to the penalty of transportation, on proof by two witnesses that their intention was to assist in the clandestine landing, or carrying away prohibited or uncustomed goods." The opposers said, "We have in our laws no such thing as a crime by implication, nor can a malicious intention ever be proved by witnesses. Facts only are admitted to be proved, and from these facts the judge and the jury are to determine with what intention they were com-

mitted; but no judge or jury can ever by our laws suppose, much less determine, that an action in itself innocent or indifferent, was attended with a criminal and malicious intention. Another security for our liberties is, that no subject can be imprisoned unless some felonious and high crime be sworn against him. This, with respect to private men, is the very foundation-stone of all our liberties; and if we remove it, if we but knock off a corner, we may probably overturn the whole fabric. A third guard for our liberties is that right which every subject has, not only to provide himself with arms proper for his defence, but to accustom himself to the use of those arms, and to travel with them wherever he has a mind. But this clause is repugnant to all the maxims of free government. No presumption of a crime can be drawn from the mere wearing of arms, an act not only innocent but highly commendable,— and to admit witnesses to swear 'that men are armed in order to assist in smuggling,' would be admitting witnesses to prove *an intention*, which is inconsistent with the whole tenour of our laws." * They objected to another provision, subjecting a party against whom a charge was preferred that he intended to assist in smuggling, to imprisonment without bail, though the offence itself were in its nature bailable; — to another which made informations for assaults upon revenue officers triable in any county in England, — and still more to the protection thrown round the same favoured class, "that the justices should be bound to admit them to bail on charges of killing or wounding any one in the execution of their duty." † The bill was carried, though by a small majority, and still remaining in force, is mentioned by Mr. Hallam as an illustration how, in framing our fiscal code, "a sad necessity has overruled the maxims of ancient law," so that "it is to be counted as a set-off against the advantages of the Revolution, and has, in fact, diminished the freedom and justice which we claim for our polity."

Preliminary steps for the pro-

Lord Talbot took up the prosecution of the Porteous rioters with great vigour, and expressed his hearty concur-

* What would they have said of an enactment making it a transportable offence simply to be "out of doors between sunset and sunrise?"

† Const. Hist. iii. 384.; Parl. Hist. ix. 1229.

rence in the resolution of the government to bring them to condign punishment. An order was made that the Lord Provost of Edinburgh, the four Bailies, the Commander of the City Guard, and the Commander of the King's troops in the castle of Edinburgh, should attend at the bar of the House. But a great calamity was now impending over the nation.

secution of the Porteous rioters.

Lord Talbot's sudden illness and death.

Before the day for the attendance of the parties arrived, Lord Talbot was no more. When apparently in the enjoyment of perfect health, when in the full possession of the confidence and esteem of his Sovereign, and of all classes in society, — while equally respected by his countrymen of all political parties, and all religious persuasions,—while he was supposed to have before him a long career of usefulness and glory, — he was suddenly seized with a spasm in the heart, which from the first was pronounced to be fatal. Being made sensible that his dissolution approached, he prepared for it with fortitude and serenity. He had a brief space allowed him to settle his worldly affairs, and having received the last consolations of religion, he set a pattern of dying, as he had always lived,— like a Christian. Early in the morning of Wednesday the 14th of February, 1737, he expired at his house in Lincoln's Inn Fields, in the fifty-third year of his age.

The news was received with consternation, not only in Westminster Hall and in the House of Lords, where he was that day expected to have presided, but there was a gloom cast over the whole metropolis, as if every family had been visited with the loss of a beloved relative.

His burial.

A general desire was felt that he should have a public funeral, and that his remains should be deposited in Westminster Abbey; but, according to a wish which, when dying, he had intimated, he was buried, attended only by his children and nearest connections, in the chancel of the parish church of Barrington, in Gloucestershire, where some of his ancestors reposed.*

* On his coffin were engraved his arms, the purse, mace, and regalia, on a brass plate, with this inscription :—

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Contemporary characters of him.

Instead of now attempting to draw a character of Lord Talbot, I shall best please my readers by introducing some of the contemporary eulogiums pronounced upon him; for every notice of him was an unqualified eulogium. Those who value him as I do can never tire of the repetition of his praise.

In the Gentleman's Magazine.

The obituary of the succeeding number of the "Gentleman's Magazine" contained the following statement:— "Feb. 14. Charles Talbot, Lord Talbot, &c., in whom all the qualities that can constitute a good man, or can adorn a wise one, were eminently united. No man ever arrived to his high dignity with such universal approbation, nor conducted himself in it with such universal applause; no man was ever more the delight of his country, or had a larger share of the hearts and affections of the people, and yet he never made use of any other method to please than a constant course of wisdom and virtue. He had the peculiar felicity to join together those contrary qualities so rare to be met with in the same person, the mildest disposition with the greatest firmness of mind; and, at the same time that he had a heart susceptible of the strongest impressions of tenderness and compassion, he maintained inviolably the strictest justice and most inflexible integrity. He had a mind so enlightened, that no falsehood could ever elude his sight, but, with inimitable sagacity, he would pursue her through all the intricate labyrinths which she took to escape him. His judgment was so clear, that he could at one view discover the most entangled points; and yet he had patience and temper to hear every thing that could be said on the most plain and obvious. He always chose to make truth appear in native simplicity, though he could have adorned it with all the graces of rhetoric. He was, in all characters and relations of life, one of the ablest, greatest, uprightest men that any age or nation

---

"The Right Honourable
CHARLES LORD TALBOT,
BARON OF HENSOL,
Lord High Chancellor of England,
And one of His Majesty's most Honourable Privy Council.
Died Feb. 14. 1736-7,
In the 53d year of his age."

has produced, and was not only an honour to his country but an ornament to human nature."

In another periodical work, in great circulation at the time, though long forgotten*, he was thus characterised by one who seems to have known him well in domestic life:—"His religion was his governing principle; it was well grounded and active; his piety was rational and manly. He was a sincere son of the Church of England, and ready to maintain her in her just rights and legal possessions. He was an enemy to persecution, and had a diffusive general and Christian charity, which made him a friend to all mankind. He had a great regard for such of the most worthy of the clergy as were distinguished by their learning, sincerity, moderation, and charity. He was a careful and indulgent father, and as no man ever deserved more of his children, no man could be more affectionately beloved by them; there was something so peculiar in this respect, that none seemed to know how to be in such friendship with his sons as my Lord Chancellor. The harmony which subsisted in his house was a very great pleasure to all who beheld it."

In another periodical.

Another notice of him, written by a friend, said,—"He was the delight and honour of his country, both in his judicial and ministerial capacity. Eloquence never afforded greater charms from any orator than when the public attention listened to his sentiments delivered with the most graceful modesty. In apprehension he so far exceeded the common rank of men, that he instantaneously, or by a kind of intuition, saw the strength or imperfection of any argument; and so penetrating was his sagacity, that the most intricate and perplexing mazes of the law could never so involve and darken the truth as to conceal it from his discernment. So excellent was his temper, so candid his disposition in debate, that he never offended those whose arguments he opposed. When intrusted with the Great Seal, his universal affability, his easiness of access, and his great despatch of business, engaged to him the affection and almost veneration of all who approached him. By clearly

* See Biogr. Brit. title "Talbot."

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delivering, with his decrees, the reasons on which they were founded, he made his Court a very instructive school of equity, and his decisions were generally attended with such conviction to the parties against whose interest they were made, that their acquiescence in them prevented any further expence. When he could obtain a short interval from business, the pompous formalities of his station were thrown aside; his table was a scene where wisdom and science shone, enlivened and adorned with elegance of wit. There was joined the utmost freedom of dispute with the highest good breeding, and the vivacity of mirth with primitive simplicity of manners. When he had leisure for exercise, he delighted in field sports, and even in those trifles showed that he was formed to excel in whatever he engaged. If he had relaxed more from the fatigues of office, the nation might not yet have deplored a loss it could so ill sustain. But though he was removed at a season of life when others but begin to shine, he might justly have said, "se satis et ad vitam et ad gloriam vixisse," and his death united in one general concern a nation which scarce ever unanimously agreed in any other particular; and notwithstanding the warmth of our political divisions, each party endeavoured to outvie the other in due reverence to his memory."*

By the "Craftsman."

These characters of Lord Talbot were supposed to come from men of the same political party with himself; but the "CRAFTSMAN," then under the influence of Bolingbroke and Pulteney, and in such bitter opposition to Sir R. Walpole's government as to be several times prosecuted *ex officio*, thus spoke of him, who, when a law officer of the crown, had assisted in these prosecutions:—"He rose, by merit, to the head of his profession, and not only supported himself in it with dignity, but adorned it, and acquired every day new praise and esteem. His prudence, moderation, and patience in the execution of his office, even amidst the highest provocations, make one shining part of his character, and are hardly to be paralleled by any instances of those who have sat before him upon that bench. Yet notwithstanding this

* See Biog. Br. Chalmers, "Lord Talbot."

amiable disposition of mind, he discovered such courage and resolution upon all occasions, as could not be shaken by the tricks of the wealthy, the applications of the powerful, or the tears of the distressed. In a word, he possessed all the great talents of his most renowned predecessors, without any of their frailties, and hath left a noble example to all his successors, so that he was not only a blessing to the age in which he lived, but may possibly derive the same happiness to his posterity, by exciting those who follow him in that high office to an emulation of his virtues. The great increase of business in the Court of Chancery since the Seal was put into his hands, is an evident proof of that confidence which the suitors reposed in him, and will do immortal honour to his memory, though it proved fatal to his life; for the constant fatigue of his employment was one of the principal causes of his death, and therefore he may be truly said to have fallen *a martyr to the public good!* He died full of glory, but to the great misfortune of his country, not full of years; and the general sorrow which his death has occasioned, will do his noble family more honour than the highest titles, or the most sumptuous monuments." *

By Smollet.

Smollet, who seldom rises above a dry and uninteresting narrative of political facts, characterises Lord Talbot as possessing "the spirit of a Roman senator, the elegance of an Atticus, and the integrity of a Cato."†

By Tindal.

All subsequent historians who treat of that period, swell the note of praise. Says Tindal,—"He was an illustrious exception to the venality charged upon the profession of the law; his life was moral, his heart was good, and his head was clear; nor did ever man fill that high station with greater abilities and approbation of the public. But just as the nation was in a manner beginning to reap the benefits of his virtues, he was snatched away by death."‡

I will only farther quote our most recent historian, who,

* Craftsman, A. D. 1737.

† Vol. iii. p. 54.

‡ Tind. Cont. xx. 340. Tindal, in stating Lord Talbot's appointment as Chancellor, had said—"He was looked upon as one of the clearest-headed as well as the best-hearted lawyers that ever practised."

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By Lord Mahon.

after referring to Lord Hardwicke, says:—"Lord Talbot is less conspicuous in history only because he was more brief in life; he died at the age of fifty-two, and even amidst the strife of parties was universally lamented as a man of the highest legal talents, of unimpeachable character, and of most winning gentleness of manners."*

Latin Elegy.

The Muses likewise were invoked to do honour to the memory of Lord Talbot. Soon after his death there was printed and privately circulated the following Elegy which shows at least a deep feeling of the virtues of the deceased:—

"Magnos sæpe viros cecinit cum Musa, repente
Obstrepuit miseræ turba maligna lyræ.
Scilicet arguitur carmen, quia displicet heros,
Et mala, quæ jactat fama, Poeta luit.
At vos securi Talbotum dicite Vates!
In quo nil livor quod male rodat habet.
Jure humana a se qui nulla aliena putavit †
Delicium humanæ gentis habendus erat.
Partium in hoc non est studio locus, omnibus idem
Uti vixit charus, flebilis interiit."

Praise of Lord Talbot by Pope in epistle to Lord Bathurst.

The most eminent English poets joined in the same strain. Pope in the early editions of his Epistle to Lord Bathurst, "on the Use of Riches," thus sang:—

"The sense to value riches with the art
T'enjoy them, and the virtue to impart,
Not meanly nor ambitiously pursued,
Not sunk by sloth, nor rais'd by servitude.
To balance fortune by a just expence,
Join with economy magnificence,
With splendour charity, with plenty health,
O teach us, TALBOT! thou'rt unspoil'd by wealth,
That secret rare, between th' extremes to move
Of mad good nature and of mean self-love.
Who is it copies TALBOT's better part,
To ease th' oppress'd, and raise the sinking heart?
Where'er he shines, O, Fortune, gild the scene,
And angels guard him in the golden mean.
At Barrington shall English bounty stand,
And Hensol's honour never leave the land.
His glories in his progeny shall shine,
And propagate the virtue still divine."

---

* Vol. ii. 257.

† Alluding to his motto, "Humani nihil alienum."

‡ For some reason which no commentator has explained, in the later editions of this epistle the name of TALBOT is entirely excluded, and it is turned into a dialogue between the poet and Lord Bathurst. Warton, in his "Life of Pope," in reference to Lord Bathurst, says—"I never saw this very amiable old nobleman, whose wit, vivacity, sense, and integrity are well known, but he repeatedly expressed his disgust and his surprise at finding in later editions this Epistle

A most touching poetical tribute to the memory of Lord Talbot comes incidentally from the author of the SEASONS, in lamenting the early death of him who was thought destined to inherit his name and his virtues. The Chancellor, always fond of the society of literary men, and eager to patronise literary merit, had formed an acquaintance with Thomson soon after the publication of WINTER, had appointed him to the office of "Secretary of Briefs," and sent him to make the tour of Europe with his eldest son. This promising youth died of a fever soon after his return from his travels, and his sorrowing tutor and friend thus opens the Poem on Liberty, which was to have been dedicated to him:—

By Thomson, in poem on LIBERTY.

"O my lamented Talbot! while with thee
The Muse gay rov'd the glad Hesperian round,
And drew th' inspiring breath of ancient arts;
Ah, little thought she her returning verse
Should sing our darling subject to thy shade.
And does the mystic veil, from mortal beam,
Involve those eyes where every virtue smil'd,
And all thy father's candid spirit shone?
The light of reason, pure, without a cloud;
Full of the generous heart, the mild regard;
Honour disdaining blemish, cordial faith,
And limpid truth, that looks the very soul."

Thomson afterwards published a long Poem to the memory of Lord Talbot, which is rather diffuse, but from which some passages may fitly be extracted.

Thomson's poem to the memory of Lord Talbot.

"Let the low-minded of these narrow days
No more presume to deem the lofty tale
Of ancient times, in pity to their own,
Romance. In Talbot we united saw
The piercing eye, the quick enlighten'd soul,
The graceful ease, the flowing tongue of Greece,
Join'd to the virtues and the force of Rome."
——"All his parts,
His virtues all, collected, sought the good
Of human kind. For *that* he, fervent, felt
The throb of patriots when they model states,
Anxious for *that*, nor needful sleep could hold
His still-awaken'd soul; nor friends had charms

---

awkwardly converted into a Dialogue, in which he has little to say. And I remember he once remarked that this line,

"P. But you are tir'd. I'll tell a tale. B. Agreed,"

was insupportably insipid and flat.—p. xxxiii.

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To steal with pleasing guile one useful hour;
Toil knew no languor, no attraction joy." . . . .
"How the heart listen'd while he, pleading, spoke!
While on th' enlighten'd mind, with winning art,
His gentle reason to persuasion stole,
That the charm'd hearer thought it was his own." . . . .
"Plac'd on the seat of justice, there he reign'd,
In a superior sphere of cloudless day,
A pure intelligence. No tumult there,
No dark emotion, no intemperate heat,
No passion e'er disturb'd the clear serene
That round him spread. . . . .
Till at the last, evolv'd, it full appear'd,
And ev'n the loser own'd the just decree.
But when in Senates he, to freedom firm,
Enlighten'd freedom, plann'd salubrious laws,
His various learning, his wide knowledge, then
Spontaneous seem'd from simple sense to flow." . . . .
"I, too, remember well that cheerful bowl
Which round his table flow'd. The serious there
Mix'd with the sportive, with the learn'd the plain;
Mirth soften'd wisdom, candour temper'd mirth;
And wit its honey lent without the sting."

Lord Talbot's descendants.

I have only further to state, that Lord Talbot, soon after he was called to the bar, married Cecil, daughter of Charles Matthews, Esquire, of Castle-y-Menich, in Glamorganshire, and great-granddaughter of the famous Judge Jenkins, who defied the tyranny of the Long Parliament, and from whom descended to the Chancellor's family the estate of HENSOL. With her he lived in a state of great connubial happiness, and she brought him a numerous offspring. The eldest son, of whom such hopes were entertained, the pupil of Thomson, died, as we have seen, before his talents and accomplishments could be of service to his country. William, the next brother, succeeded to his father's title, estates, and virtues. Of him it is related, that in the debate, in 1741, on the dismission of Sir Robert Walpole, being rudely called to order by Lord Cholmondley, "he declared himself an independent Peer, a character which he would not forfeit for the smiles of a court, the profit of an employment, or the reward of a pension: he said, when he was engaged on the side of truth, he would trample on the insolence that would command him to suppress his sentiments." * He was afterwards created Earl Talbot and Baron Dynevor, with a remainder

* Smollet, ii. 397.

of this barony to his daughter, an only child. She married the heir of the ancient family of the Rices, in the county of Caermarthen, and their son, the present Lord Dynevor, is the heir-general of the Chancellor.* The earldom becoming extinct, the barony of Talbot descended on John Chetwynd Talbot, the Earl's nephew, who was himself, in 1784, created Earl Talbot and Viscount Ingestrie. His son, the present Earl Talbot, is the Chancellor's representative in the male line; and I am happy to think that the Great Seal may, ere long, be again in the possession of this distinguished family.

* This venerable nobleman is in possession of all the Chancellor's papers, but declines to allow any use to be made of them — which seems to me very strange, as I am sure that nothing can appear among them that would not be for the honour of his ancestor. With the single exception of his refusal of an application I made to him through his kinsman, my valued friend the Honourable John Talbot, I have had the freest communication of family papers during the whole course of my biographical labours. I make this complaint only as an apology for not being able to tell more of the private history of Lord Chancellor Talbot, — which perhaps might have been as full and as interesting as that of Lord Chancellor Cowper.

END OF THE FOURTH VOLUME.

London:
Printed by A. Spottiswoode,
New-Street-Square.

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